Supreme Court, U.S.
FILED

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No.

In the

SUPREME COURT OF THE UNITED STATES

EULICE M. HOLLIMAN,
Petitioner

v.

CLARK ATLANTA UNIVERSITY, INC.
NATHANIEL ROBERTS, JR.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

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PETITION FOR WRIT OF CERTIORARI

Sandra Jackson Sheppard
Counsel Of Record
Sheppard & Associates
455 Park Avenue, S.E.
Atlanta, Georgia 30312
404-622-5777

QUESTION PRESENTED FOR REVIEW

WHAT IS THE PROPER ANALYSIS TO BE GIVEN BY A DISTRICT COURT TO COMPLAINTS OF FEMALE EMPLOYEES THAT ARE ESSENTIALLY QUALITATIVEL DIFFERENT FROM COMPLAINTS OF SIMILARLY SITUATED MALE EMPLOYEES SO AS TO CONSTITUTE ANOTHER ASPECT OF CONDUCT PROHIBITED UNDER TITLE VII "BECAUSE OF SEX" AND NOT CONDUCT OF AN EQUAL OPPORTUNITY ABUSER?

PARTIES TO THE PROCEEDING

Petitioner is Eulice M. Holliman.

Respondents are Clark Atlanta University, Inc., and Nathaniel Roberts, Jr., Individually and in his Official Capacity as Assistant Vice President and Comptroller for Finance and Administration for Clark Atlanta University, Inc.

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OPINIONS BELOW

The opinion of the United States Court of Appeals for the Eleventh Circuit has not been reported, but is reproduced in the Appendix to the Petition for a Writ of Certiorari, at A1-A2.

The opinion of the United States District Court for the Northern District of Georgia has not been reported but is reproduced in the Appendix to the Petition for Writ of Certiorari at A-3.

The Report and Recommendation of the magistrate, which constitutes the findings of fact and conclusions of law of the district court is reproduced in the Appendix to the Petitioner for Writ of Certiorari at A4-A57. [FN1]

FN1. The Appendix to the Petition for Writ of Certiorari is cited as "Pet. for Cert. App.

JURISDICTION

This Court has jurisdiction pursuant to 102 Stat. 662, 28 U.S.C. § 1254(1) (1988). The judgment of the United States Court of Appeals for the Eleventh Circuit was entered on January 17, 2006 (Pet. for Cert. App. A-1), no Petition for Rehearing was filed.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Title VII of the Civil Rights Act of 1964, 78 Stat. 253, as amended, 42 U.S.C. §§ 2000e-5e et seq., provides, in pertinent part, as follows: (a) It shall be unlawful employment practice for an employer – (1) to

fail or refuse to hire or discharge any individual, or to otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin.

STATEMENT OF THE CASE

Petitioner, Eulice M. Holliman, filed discrimination charges with the Equal Employment Opportunity Commission (EEOC), on June 22, 2001, (Pet. for Cert. App. A-166); a Determination on the merits was issued on March 15, 2002 finding that there was reason to believe Ms. Holliman was discriminated against, (Pet. for Cert. App. A-170); on May 2, 2002, Ms. Holliman sent a letter to EEOC complaining about retaliation, (Pet. for Cert. App. A-167); on October 16, 2002, EEOC issued its Notice of Right to Sue with Conciliation Failure, (Pet. for Cert. App. A-145). Ms. Holliman, commenced this action on January 16, 2003, in the United States District Court for the Northern District of Georgia, (Pet. for Cert. App. A-4). She sued respondents, Clark Atlanta University, Inc. ("CAU" or the "University") and Nathaniel Roberts, Jr. ("Roberts" or "Comptroller"), alleging that she had been discriminated against because of her sex in violation of Title VII of the Civil Rights Act of 1964, 78 Stat. 253, as amended, 42 U.S.C. §§ 2000e, et seq. (Pet. for Cert. App. A-143) Judge Julie E. Carnes referred case to Magistrate Linda T. Walker to resolve pending motions, including the final report and recommendation of the respondents' summary judgment motion. [FN2] (Pet. for Cert. App. A-4). Ms. Holliman asserted a hostile or abusive work environment harassment theory because of gender as the basis of her complaint. She alleged that she had been constructively discharged by CAU because it

allowed and condoned a hostile and abusive work environment for female employees to be created by its Assistant Vice President and Comptroller for Finance and Administration for Clark Atlanta University, Inc., Nathaniel Roberts, Jr., the result of which caused her physical illness, anxiety and the need for medical care. (Pet. for Cert. A-152-A-155;A-167).

> FN2. Judge Carnes by Order directed the Clerk to refer this case to a magistrate judge to resolve the pending motions. The Court noted "Title VII cases are routinely referred to a magistrate judge, pursuant to Internal Operating Procedure No. 920-2(a), NDGa." and this case was not presumably due to original complaint indicated a class action filing. (Pet. for Cert. A-58-A-59).

The case was submitted to the magistrate on October 19, 2004. The magistrate filed her report and recommendation on March 3, 2005.

Ms. Holliman was employed by CAU from July 19, 1991 until April 24, 2002, when she went out on medical disability due to the impact of her job on her health. (Pet. for Cert. App. A-166-168). She worked in the accounting department initially as an Accounts Payable Technician until she was given the duties and responsibilities of the Accounts Payable Supervisor. (Pet. for Cert. App. A-6). Richard McLemore became the Accounts Payable Manager and her immediate supervisor in February 1998, (Pet. for Cert. App. A-60), and he was the one who gave her the duties and responsibilities as the supervisor, (Pet. for Cert. App. A-61); Although Ms. Holliman's complaints about Mr. Roberts did not start until about December 2000, (Pet. for Cert. App. A-63) the record

shows CAU's female employees were complaining about Mr. Roberts' conduct toward them long before he became a full-time employee of the University. (Pet. for Cert. App. A-69-80;82;88;90). Prior to becoming an employee, Mr. Roberts worked for an accounting firm, Clausell and Associates, and was assigned as an external auditor at the University. (Pet. for Cert. App. A-62) It was in his capacity as an external auditor that he first came in contact with the general accounting department, which was mostly females, and the grants and contract department, which was mostly male. (Pet. for Cert. App. A-72). Mr. Roberts quickly established a reputation for being an abrasive and difficult person to get along with, especially among the female employees. (Pet. for Cert. App. A-70-88;92-98) One male employee, Bradley T. Goldsby, testified that it almost seemed like common knowledge that Mr. Roberts would talk to women in "a belittling way, demeaning way." (Pet. for Cert. App. A-102). If there is a common thread to be found in all the testimony of the female employees, former and current, it would be centered on the manner in which Mr. Roberts talked to them, along with what he said. For example,

Joyce Stafford testified that she observed Roberts' interaction with female employees at two universities, the CAU and Morehouse School of Medicine, both during period of time Mr. Roberts was an external auditor. The same problem happened at both schools; the female employees complained about the manner in which Mr. Roberts talked to them; since Ms. Stafford worked for a high level official in both universities, the females would come to her and she had to act as intermediary to relay information between the female staff and Mr. Roberts: they "refused to work with him any longer because of his demeaning attitude, the way that he talked with them. He

treated them like they were brainless." (Pet. for Cert. App. A-70)

Toyah Ellis came in contact with Mr. Roberts every year at audit time at CAU and recalled her interactions with him were constant conflicts. She was a supervisor in the general accounting department with all female subordinates except one male, Christian. Her immediate supervisor was Pam Pressley who Mr. Roberts would have real, real bad confrontations. Ms. Ellis recalled Mr. Roberts was super critical of the general accounting department and would hear the bulk of the confrontations between Ms. Pressley and him concerning the staff's ability. As an example of Mr. Roberts' attitude, she recalled an occasion when Mr. Roberts needed certain journal entries pulled, and one of her subordinates, Dorothy Alexander, an older person had the duty all day to sit and key journal entries; she told Mr. Roberts that she would have Ms. Alexander to pull the information and he made the remark, "Dorothy Alexander wouldn't know a journal entry if it hit her in the head." Ms. Ellis further testified Mr. Roberts would find fault with a procedure in the general accounting department but on the same matter in the mostly male grants and contracts department using the same procedure, he would say nothing. She even observed that her one male subordinate, Christian, enjoyed a more favorable relationship with Mr. Roberts than she or any of the female employees: "[h]e interacted with that group, Mr. Roberts and the male accountants in Grants and Contracts, and he made the comment with Mr. Roberts standing there one time to me because I didn't have any children and I wasn't married, and doing accounting, you would have to work long hours on closing, 'Why don't you go home and have some babies?' And Mr. Roberts

chuckled, and they went on down the hall into Grants and Contracts." Ms. Ellis recalled signing a document that might have been a petition about Roberts' conduct: "Some of us signed witnessing a behavior that he [Roberts] had toward a female staff member at the university. . . . I believe it was Tom Poitier's secretary. He yelled at her and made some offensive comments." (Pet. for Cert. App. A-71).

Latonia Franklin kept most of the files for the departments, so if the auditors needed certain files, she would normally retrieve those files, and for this reason, she had to communicate with Roberts. Ms. Franklin testified she found it very unpleasant working with him: he made her feel as if she was nothing when he was talking to her; that she was beneath him. After Thomas Poitier became her boss, she would refer Mr. Roberts to him and let Mr. Poiter give her the instructions; she got to the point where it was very difficult for her to come to work; she felt Mr. Roberts was beyond rude, and she didn't like the way he was treating her and she just couldn't take it anymore; she would end up in the bathroom crying, upset, ready to go home; it was the way he talked to her that was very degrading; she recalled one occasion that almost became physical and she walked away and told Mr. Poiter she just couldn't take it anymore; Mr. Poiter just told her "to let it go, just try to let it go, try to get past it." she filed a formal complaint with Dr. Teamer, Mr. Poitier's boss; she eventually quit working for CAU. (Pet. for Cert. App. A-73).

Marinetta Blalock testified Roberts made her feel bad: "I didn't want to come to work . . . because I did not know how to conduct myself so that I wouldn't get in trouble with him." She observed Mr. Roberts treated

male employees differently: "He seemed to be more careful when he talked to men." Ms. Blalock recalls Teja Singh as the only male she remembered Mr. Roberts "was kind of a little hands on. Mr. Singh wouldn't fight back." But she recalled how Mr. Roberts treated Mike Womble who sat on the other side of the wall with her: she doesn't know what tone Mr. Roberts used with Mr. Womble because he "took him to his office" and talked to him out of her presence or the general office presence. She testified that she didn't make any formal complaints about Roberts because "I felt like it wouldn't do any good. . . . Because I heard other people making complaints, and it seemed like nothing was done. . . . I saw it because the behavior never changed. . . . I don't know what was supposed to happen, but I'm basing it on the fact that his behavior didn't change." She testified Mr. Roberts did not properly guide her: "If I was doing something incorrectly, tell me. You don't have to yell at me. . . . I mean that belligerent tone of voice. It's no need to talk to me that way, just tell me how you want the work done." (Pet. for Cert. App. A-75).

Paula Barnes, an accountant, testified that about a month into her employment, Roberts gave her a "clerical-type assignment; it was go to some files, pull some folders, make copies of the information in the folders, put it in alphabetical order, and give it back to him. . . ." or Mr. Roberts would give her simple instructions, "he would say, you should be writing this down, simple instructions like pull a file, copy the papers in it, put them in chronological and alphabetical order. There was no need for me to write that, but he made me write it. You need to write that, so I did that. And then he made me read it back to him, those kinds of things. And then, do you understand, and I would say yes. Are you sure you

understand. I would say yes. That was just unnecessary, unprofessional, uncalled for. . . . After I would complete the assignment following those exact instructions that I had to write, he would say, this is not what I asked for. It didn't make sense. His behavior did not make sense." She testified he was rude, abrasive and "He didn't treat me as a professional on an equal level, and which I considered us to be. I had just as much experience as he did. He just kind of talked in a condescending way to me." She worked in his office one week after the first assignment: "Because I refused to work for someone who didn't have any respect for me, and I just could not work with him under those conditions." (Pet. for Cert. App. A-77).

Betty White recalls her first and last contact with Roberts about four years ago concerning petty cash of $4,000 in her custody after her supervisor Jean Chandler died; she wanted to turn in the money and she called Mr. Roberts for instructions and he told her to bring the money to him; when she finally met with him, she described Roberts' manner of talking to her as very nasty, harsh, and hitting his desk. (Pet. for Cert. App. A-78).

Jacqueline Jackson recalls meeting Roberts when he was an external auditor for CAU and he seemed likeable at that time; but after he became a full-time employee, his interaction with her changed in a negative way when she was trying resolve problems with students' scholarships money: "I was trying to explain that to him, and he just went overbroad with me. . . . He talked down to me . . . it was just like he didn't know me, he talked to me like I was somebody didn't know what I was doing. He changed my words around and threw them at me. It was just almost degrading, the way he was talking to me.

It was so upsetting to her that she told her boss, "I will not deal with him." She said, "I've never had the confrontation of having to deal with anybody like I dealt with him that day. That day was it. I said I wasn't dealing with him anymore. I told my boss I would go above or below. I would not deal with him. I was not used to being treated that way." (Pet. for Cert. App. A-79).

Annette Ogletree recalled seeing Holliman in the office crying as a result of her contact with Roberts: "She was very upset and crying because she felt as if he was picking on her. So I mean, she cried on numerous occasions. I've seen her cry after having a conversation with Mr.Roberts." Ogletree recalled some of these conversations between Holliman and Roberts occurred in his office and a couple of them out in the front: " he was out front, . . . asking her the same question over and over and over. And you could see as if he was maybe harassing her in a way. And so after she wouldn't break down and cry in front of him, but after he would leave, she would break down and cry or go to the restroom and cry." She recalled Roberts blaming her and Ms. Holliman for some checks going out in the mail and he had Mr. McLemore to write them up; as it turned it was actually Mr. McLemore who put the checks in the mail, but they got the punishment. She recalled the occasion she heard her coworker Mr. Womble saying words to the effect in reference to Plaintiff, "if looks could kill he [Mr. Roberts] would kill you" in commenting about the way Mr. Roberts would look at Ms. Holliman. (Pet. for Cert. App. A-80)

Pam Pressley was managing the accounting function and the general ledger when Mr. Roberts was an external

auditor working for Mr. Claussel; she recalled

> "He could be very charming and friendly in a group where there were people who he felt responsible to . . . But one on one, he could be very abusive in his stance and the way that he spoke, not that he was a yeller, I can't remember him yelling or raising his voice at me, but the just contempt that could come through in his voice and in his demeanor could be very intimidating."

She recalled the incident that ended her career at CAU:

> "I went into his [Roberts] office to talk to him about something that had to do with business. . . I am pretty forceful . . . I will tell you what I think, and then you tell me what you think. And that doesn't mean that I'm going to back off. And . . . I can't specifically remember what we were talking about, but he told me to get the fuck out of his face. And that's when I decided that I couldn't work there anymore, so I immediately looked for a job. . . . And even after I gave them two weeks' notice, he and Teamer [vice president for Finance] wrote me letters telling me that . . . at my level, I should . . .feel professionally responsible to give them more notice and have them prepare better to replace me. But I – at that point I didn't care because there was no consequence to him for speaking to me in that manner. And I actually went over to Dr. Teamer's office, told him what Nate had said to me and told HR [Human Resources] what Nate had said to me and filed a complaint using their rules, and there was no consequence."

Ms. Pressley recalled:

> "I can tell you that we would be standing – the accounting area was a room that had probably four desks lined up with people, employees on either side. And I would engage in conversation with him at the front of the room, and there were, . . . eight witnesses to just whatever he wanted to say to me in the most disrespectful manner, in the most intimidating manner, . . . slamming doors, marching back and forth . . . just like a Napoleon or something, . . . it was bad."

Ms. Pressley acknowledged that Mr. Roberts could be abrasive to male employees

> "but he wouldn't take it to the point of that intimidating stance . . . he was short tempered, or he would be edgy, but . . . he wouldn't be as openly hostile with the guys. . . . sometimes in my stress from work, I can be curt, . . . and he can be curt. . . .that kind of thing you would kind of expect or look over. But . . .he would be openly hostile to women. I mean, it would appear to me that he was doing it for the purpose of intimidating."

Ms. Pressley recalled observing Roberts' treatment of other female subordinates:

> ". . . there's a woman, Saba [Tesfamariam] who is Ethiopian, her husband worked in Grants and Contracts, Kif. . . . he [Mr. Roberts] made her tremble; . . . he was just awful to her. . . . speaking to her as if she were incompetent, that haughty tone of voice, only more pronounced than haughty even. It was just dripping with sarcasm, body presence closer than you needed to be in order to be respectful, . . . speaking to them [Saba and Kif] in just disrespectful tones.

> And the things he said were implied that they didn't know what they were doing, that they were incompetent, or they didn't do it in a timely manner or . . . It wasn't worth his time, that kind of thing."

Ms. Pressley recalls that the female employees didn't always engage Mr. Roberts and confront him "because it was a guarantee that the matter would escalate. . . ." Mr. Roberts "would just be as rude as he needed to be to get what he wanted when he wanted or, . . . he would intimidate the women until they were in tears or cowering in a corner somewhere. It was disgusting." Ms. Pressley recalled when the announcement was made that Mr. Roberts would become a full-time employee at CAU:

> "I made a conscious decision to tone down my own personality so that I wouldn't provoke him. I didn't want to be in a position where, number one, I was reporting to him, and, number two, I was going to have to deal with the things that I'd seen him do or experience myself when he was auditor. . . .I felt, . . . some reservation from the moment the announcement was made, I couldn't believe it."

Ms. Pressley testified Mr. Roberts' negative behavior is well-known on CAU campus. Ms. Pressley further describes Mr. Roberts conduct:

> "He was talking to me in a very disrespectful tone in front of people who worked for me. I felt that he was undermining my authority. I just felt unsafe and uneasy around him. I could tell that he was so angry sometimes that I didn't know what he would – you know what I mean? I just didn't feel safe. . . . It was beyond, I don't like the way he manages people. I think what he does is sexist. I think that he's a chauvinist. It

went beyond that. It got to the point where I really felt unsafe." (Pet. for Cert. App. A-82).

James Clausell is the principal owner of Clausell & Associates; he contracted as independent federal auditors for CAU for years 1991 through 1998, and he did limited consulting work at the Morehouse School of Medicine in about early 1997. Mr. Clausell recalls the occasion when Eli Phillips, the vice president of finance at the Morehouse School of Medicine, requested the removal of Roberts from the engagement: "He said, well, there was some conflicts with, I think, a staff person." Mr. Clausell recalls receiving complaints from Pam Pressley asking him to replace Mr. Roberts: "she said she just couldn't get along with him, they had problems getting along together. . . . I recall she was saying he was very abrasive. His personality was very hard. He wasn't agreeable," and Mr. Clausell recalls Teja Singh complained once or twice about how Mr. Roberts was abrasive, aggressive in performing his services. Mr. Clausell recalls being asked by Dr. Teamer and Dr. Cole about a recommendation on Mr. Roberts as a potential employee for CAU:

"we met to talk about Mr. Roberts taking on a position at Clark Atlanta University. Dr. Cole – and I did talk about him making that transition, asked my opinion can he do the job, is he a good person for the institution. And I deferred – or I did not conclude. I did not give him a definite answer. I said he would have to make that call and as to his personality. . . . my advice to the school was that I didn't think he was a good match. . . . Because of the complaints of Pam and Mr. Singh, and these were people I think he was going to be supervising. And I thought that

> based on their complaints, it would create a problem within that department."

Mr. Clausell didn't recall whether he gave this information to Dr. Cole, "but Charles Teamer, I did give that advice to." (Pet. for Cert. App. A-88).

Thomas W. Cole, Jr. retired from his position as president at CAU; he was president from July 1, 1989 until July 31, 2002; Dr. Teamer was the chief fiscal officer, vice president for finance, reporting directly to Cole. Dr. Cole recalled a discussion with Dr. Teamer regarding consideration of hiring Mr. Roberts, but he didn't recall whether it was in advance of hiring Roberts or not. Dr. Cole denied any complaints about Mr. Roberts' conduct from female employees; Dr. Cole recalled Dr. Teamer discussing Mr. Roberts' leadership style: "I don't remember any specific conversations other than his observation that Mr. Roberts didn't have the best people skills. But nothing beyond that." Dr. Cole denied being made aware of an EEOC complaint being filed about Mr. Roberts' conduct; he testified that Dr. Ross, who replaced Dr. Teamer as the executive vice president, did not bring any complaints about Mr. Roberts' conduct to him; however, Dr. Ross did discuss Roberts' leadership style with Dr. Cole, calling Mr. Roberts "a typical bean counter, which meant that they focused mostly on numbers rather than on people." Dr. Cole denied Bobby Young ever brought to his attention any complaints about Roberts' conduct concerning female employees. (Pet. for Cert. App. A-89)

Thomas R. Poitier recalled his secretary LaTanya Franklin brought a complaint to him about Mr. Roberts; Mr. Roberts became very upset when Ms. Franklin could

not tell the whereabouts of Mr. Poiter and he became very offensive; Mr. Poitier talked to Mr. Roberts about the incident and recalled these exact words being used by Mr. Roberts:

> "[H]e said, 'That damn girl doesn't know what she talking about,' but I said, 'She obviously – Nate, she's upset about something. Something went on. . . . I'm not here to say what happened but something happened, and she's near tears or crying.' So he said, 'She didn't know what the hell she was talking about. The damn girl didn't know what the hell she was talking about.' . . . Those are his words." (Pet. for Cert. App. A-90).

T. J. Singh at one time was the manager over the mostly male grants and contracts department; he said, "I don't remember any major conflicts"; Singh testified in a general sense that a subordinate employee would say "the accountant is hard on me"; he did not receive a single written complaint from any of his subordinate employees about Roberts; Singh testified that he did not observe Roberts asking the same question more than once to any of his subordinate employees; Singh testified that sometimes Roberts had a communication problem, "he would come, you know, like he would shout at you, . . ." Singh's opinion was Roberts could have used a better management style. Singh characterized his working relationship with Roberts as "Just a regular normal, employee and supervisor." Singh testified that he doesn't remember Roberts ever saying anything that he felt was derogatory relating to his national origin. (Pet. for Cert. App. A-91).

Melba Carmichael was Mr. Roberts' secretary for four years; she complained to Mr. Young that,

> "Mr. Roberts was just rude and nasty, he just had a personal attitude against certain people, and he was just nasty and talked to you as if you were a child. And it was very inappropriate and I'm not a child and I'm not going to be disrespected by anyone."

She testified that Mr. Roberts displayed this rude and nasty attitude basically to women:

> "[H]e would just come in with a nasty attitude; and if you didn't just jump whenever he said something, he was just nasty. . . . He tried to intimidate by just being nasty, just saying certain things, just if you respond to him in a certain way or just respond, if he – he would try to make you feel that you were stupid, that you don't know what you're talking about, and you don't have enough brains to think for yourself."
>
> Sometimes Mr. Roberts would not respond to her but would just look at her and then would go in his office and slam the door. She had these types of interactions with Mr. Roberts basically several times a day, maybe two or three times a week. She felt Mr. Roberts was going out of his way to find fault with her. She also complained to Michael Lecour, the Director of Human Resources about Mr. Roberts' conduct toward her. After the Grants and Contracts department was removed from Mr. Roberts' supervision, he commented to Ms. Carmachiel something to the effect of "it was being given to Alene Denson and Janet Scott, women, who couldn't think, I'm sure."

Ms. Carmachiel also observed Mr. Roberts treated male employees more favorable than female employees:

> "When they came in, it was like everything was fine, . . . anything they did was fine, any report that they did was fine. . . . But if a male came in and something was incorrect or not satisfactory, he would just be nice and calm and say that, okay, just fix it and whatever."

She recalled if the female accounting assistants Saba and Victoria would come with the same thing,

> "he would just talk to them – and the door would be open so I could hear . . . say things like, This is not correct. Why didn't you – did you read? Did you do your research? . . . But I have seen him have Saba in tears because of the way he spoke to her, and Victoria as well. She didn't cry, but she ended up leaving. She just gave her two weeks' notice, I think, a few weeks after that particular incident."

Mr. Roberts spoke to Daryl Givens, a male employee from the grants and contracts department, with respect. She recalled if something wasn't done or the reports weren't correct in payroll, Mr. Roberts wouldn't talk to Freddie Greer the way he talked to female employees. She observed Mr. Roberts's interactions with Ms. Holliman:

> "I had noticed him talking to Ms. Holliman in an intimidating and infuriating manner, as if he thought she couldn't think, that she was stupid and just the manner in which he talked to her."

A few times, Holliman was sick and had to go to the doctor. When she would come in, Mr. Roberts would demand a doctor excuse and require Ms. Holliman to fill out forms for absenteeism even though Ms. Holliman was in compliance with CAU policy; she observed it seemed Mr. Roberts was trying to keep record on just about everything Ms. Holliman did, but she never heard Mr.

Roberts ask Mr. McLemore to report on Ms. Ogletree or Mr. Womble. She observed Roberts started this process of watching Ms. Holliman after she went to Mr. Young about his conduct. She recalled Mr. Roberts making negative remarks about Mr. Tesfamariam and Mr. Singh, both of same Indian nationality: he would say certain things: "like those people" or

> "those type of people do this or they don't do that or they don't believe in this or they believe in that or they don't observe certain things the way we do or they run their houses – they're over their women and they tell the women what to do and the women do it and don't say anything." (Pet. for Cert. App. A-92).

Richard McLemore recalled Ms. Holliman complaining about Mr. Roberts; Mr. McLemore tried to redirect Mr. Roberts from going directly to Ms. Holliman, and it worked for a short period and then Ms. Holliman's complaints started again; he testified each time Ms. Holliman asked for her supervisory duties pay increase, he would make a request but she never received the proper pay increase; he admitted she was entitled to receive it. Apparently after the time expired to make changes to his deposition and after he resigned from CAU, Mr. McLemore prepared on his own accord a declaration and gave it to Ms. Holliman, and he recalled the following events:

> "1. Mr. Nathaniel Roberts would raise his voice only to women whenever he wanted to emphasize a point. When he talked to women he would talk in an extremely aggressive manner. The women that I am aware of this happening to are: Eulice Holliman, Saba Tesafarim, and Marinetta Blalock. When Mr. Roberts wanted to

emphasize a point to men (Teja Singh), he would take them into his office and talk to them. When I observed making a point to men he would not talk to them in the same tone as the women.

2. After Mr. Roberts spoke to Mrs. Holliman in his aggressive tone asking her questions and she replying with answers to the best of her ability, she would come into my office afterwards and complain with bouts of crying.

3. The conflicts between Mrs. Holliman and Mr. Roberts were seemingly taking a toll on her health.

4. Mr. Roberts instructed me through the use of memos to reprimand Mrs. Holliman on several occasions.

5. When Mrs. Holliman would have a doctor appointment, Mr. Roberts would always want her to fill out a leave slip and it was not necessary because she would come to work before the 3 ½ hours that were require by the university to complete a leave slip.

6. Mr. Roberts would on occasions call me into his office and discuss Mrs. Holliman work and her work habits. Mr. Roberts would ask nothing about my other subordinates. My overall observation was that Mr. Roberts was seemingly targeting Ms. Holliman, because he only had issues with her and he was only seeking to reprimand her." (Pet. for Cert. App. A-98).

Darayl Givens, a male employee in the Grants and Contracts department, testified he did not have direct contact with Mr. Roberts, that the work was directed

through Mr. Singh to him and other subordinate employees; that Mr. Roberts did not bring any complaints to him about his work; he did not have any conflicts with Mr. Roberts. (Pet. for Cert. App. A-101).

Bradley T. Goldsby, a Budget Analyst, testified there were occasions he went to Mr. Roberts' office to get some information: he never engaged in any heated discussions with Mr. Roberts; Mr. Roberts never talked to him in a demeaning or condescending manner; Mr. Roberts never raised his voice at him or act in an abrasive manner with him or act short with him or act impatient with him; Mr. Goldsby did testify that he had heard rumors that Roberts would talk to women in "a belittling way, demeaning way" and "I want to say almost seemed like common knowledge." (Pet. for Cert. App. A-102).

Malvern G. Edwards, a Senior Accountant, testified Mr. Roberts did not approach him in a demeaning or abrasive manner; that he never had any conflicts with the manner Mr. Roberts communicated with him; that he did observe conflict in the interaction between Saba and Mr. Roberts, a very upset reaction on Saba's face after communicating with Mr. Roberts; that he recalled Mr. Singh commenting that he didn't like the way Mr. Roberts talked to him, but Mr. Singh did not use the word "demeaning." (Pet. for Cert. App. A-102).

Freddie Greer, Jr., worked in the Payroll Department, testified that he has "never, not once" had any conflicts with Mr. Roberts; Mr. Greer testified Mr. Roberts is his friend, "Been over to his house, . . . go visit, talk to him once a week now. We're very close. Never had a conflict with him." . (Pet. for Cert. App. A-102).

SUMMARY OF ARGUMENT

This case turns first on whether a district court is required to consider all of the acts, prior and contemporaneous, when these acts constitute the conduct of the same successively higher supervisor being complained about by a sexual harassment plaintiff, even though majority of such acts were pertaining to other female employees, in order to establish the conduct was "because of sex" and was severe or pervasive under Title VII. This case turns also on the proper analysis to be given by a district court to complaints of female employees that are both quantitatively and qualitatively different from complaints of similarly situated male employees so as to constitute another aspect of conduct prohibited under Title VII "because of sex" and not conduct of an equal opportunity abuser. The case was submitted to a magistrate, who made findings of fact in which she found Eulice Holliman's allegations of harassment were not gender related. Specifically, the magistrate agreed with CAU that none of Mr. Roberts' comments or conduct was gender-specific or beared any relation to Ms. Holliman's protected status as a woman. The magistrate found Mr. Roberts was simply a nasty individual, who talked down to people and was not well-liked by men or women, and when taken as a whole, such conduct would not, according to a reasonable person, rise to the level of a hostile work environment for gender harassment.

The magistrate's factual findings were objected to by Ms. Holliman on several key grounds that: (1) the magistrate incorrectly concluded the additional information about Mr. Roberts' attitude and demeanor, as

reflected in his nonverbal conduct, in Ms. Holliman's affidavit contradicted her prior deposition testimony; (2) the magistrate discounted historical and contemporaneous deposition accounts of Mr. Roberts' demeaning conduct toward female employees which forced female employees to work in a qualitatively different ongoing hostile and abusive environment that male employees did not have to endure; and (3) the magistrate did erroneously strike the declaration of Mr. McLemore, a nonparty witness, on the ground it should have been produced after closing of discovery as new evidence under the FRCP 26(e), instead of as a declaration to clarify his prior deposition testimony.

In National Railroad Passenger Corporation v. Morgan, this Court affirmed the support of Morgan's claim being based upon evidence from a number of other employees describing acts of managers making racial jokes, performing racially derogatory acts, making negative comments regarding the capacity of blacks to be supervisors, many of which occurred outside the 300 day fling period, as all part of the same actionable hostile environment claim. The hostile environment was not limited to the reach of Morgan's experience alone but included the overall work environment of members of the protected class. Even though Mr. Roberts began creating a hostile environment with his abrasive and militaristic personality for CAU's female employees in general when he worked as an external auditor, CAU hired him any way as a full-time high level supervisor where he simply continued and exacerbated this pattern of conduct under the guise of a management style, to such an extent that it became common knowledge to female and male employees alike that the female employees would be abused by him with impunity. The magistrate did not

consider this pattern in addition to the nine acts specific to Ms. Holliman as showing the pervasiveness of the alleged hostile environment created by Mr. Roberts, but instead concluded the nine acts were too isolated over a relatively short period of time to rise to the level of severe or pervasive.

In the Eleventh Circuit, there appears to be inconsistency in applying the guidelines of National Railroad Passenger Corporation v. Morgan and Harris v. Forklift Systems, Inc. to consider all acts that are part of the hostile work environment claim which may fairly be said to part of one unlawful employment practice.
A hostile work environment claim should be based on consideration of those facts which show a qualitative difference which demonstrates the pervasiveness or severity of the offensive conduct was "because of sex" and not displayed the same to female and male employees alike. This perspective will both promote the purpose of Title VII to eliminate discriminatory workplace conduct which hides under a gender-neutral appearance and protect employers from sensitive employees who make unreasonable complaints about truly innocuous conduct that is displayed equally to men and women alike. The magistrate's factual findings do not fairly represent the developed record on the conduct of Mr. Roberts which permeated CAU's work environment such that all female employees were on notice that they were expected to endure his abuse as a condition of their job. The magistrate dismissed Ms. Holliman's claim by simply characterizing Mr. Roberts' conduct as criticizing Ms. Holliman's work performance in arguably a non-constructive way and perhaps a bit belittling. Applying the correct Court analysis to the magistrate's factual findings requires the reversal of the decisions below

dismissing Ms. Holliman's hostile environment claim and retaliation claim as well.

ARGUMENT

I. PROPER ANALYSIS SHOULD LOOK AT THE QUALITATIVE DIFFERENCE IN COMPLAINTS OF SIMILARLY SITUATED FEMALE AND MALE EMPLOYEES TO DETERMINE WHETHER CONDUCT IS MERELY INNOCUOUS OR DISCRIMINATORY "BECAUSE OF SEX" AND NOT MERELY CONDUCT OF AN EQUAL OPPORTUNITY ABUSER.

Section 703(a)(1) of Title VII of the Civil Rights Act of 1964 provides that it is unlawful for an employer ". . . to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment because of such individual's race, color, religion, sex, or national origin". 78 Stat. 253, 42 U.S.C. § 2000e-2(a)(1). In 1986, this Court in Meritor held that the phrase "terms, conditions or privileges" is not limited to economic or tangible discrimination, and, therefore, a hostile work environment on the basis of sex could be a violation of Title VII. In a unanimous decision, the Court announced that Title VII invests in employees the right to work in an "environment free from discriminatory intimidation, ridicule and insult." Meritor Savings Bank v. Vinson, 477 U.S. 57, 65 (1986). The Court relied on the development of the offensive work environment concept as depicted in *Rogers v. EEOC*, 454 F.2d 234 (CA5 1971), cert. denied, 406 U.S. 957, 92 S.Ct. 2058, 32 L.Ed.2d 343 (1972), where the Court of Appeals held that a Hispanic complainant could establish a Title VII violation by demonstrating that her employer created an

offensive work environment for employees by giving discriminatory service to its Hispanic clientele. The Meritor Court approved the interpretation that
"[T]he phrase 'terms, conditions or privileges of employment' in [Title VII] is an expansive concept which sweeps within its protective ambit the practice of creating a working environment heavily charged with ethnic or racial discrimination.... One can readily envision working environments so heavily polluted with discrimination as to destroy completely the emotional and psychological stability of minority group workers...." 454 F.2d, at 238.
In 1993, this Court held conduct that is not severe or pervasive enough to create an objectively hostile or abusive work environment--an environment that a reasonable person would find hostile or abusive--is beyond Title VII's purview and if the victim does not subjectively perceive the environment to be abusive, the conduct has not actually altered the conditions of the victim's employment, and there is no Title VII violation. Harris v. Forklift Systems, Inc., 510 U.S. 17 (1993). The emphasized that its decisions so far has "merely presented some especially egregious examples of harassment. They do not mark the boundary of what is actionable." Id. at 22. The Court equally emphasized that there is no mathematical precise test, "[b]ut we can say that whether an environment is 'hostile' or 'abusive' can be determined only by looking at all the circumstances. These may include the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance." Id. at 23. In 1998, the Court reiterated
"The critical issue, Title VII's text indicates, is whether members of one sex are exposed to disadvantageous terms or conditions of employment to which members of

the other sex are not exposed," Oncale v. Sundowner Offshore Services, Inc., 523 U.S. 75, 80 (1998), citing *Harris, supra,* at 25, and reiterated Title VII is prevented from expanding into a general civility code by not reaching "genuine but innocuous differences in the ways men and women routinely interact with members of the same sex and of the opposite sex." Oncale , 523 U.S. at 81. The Court emphasized that all harassment cases "requires careful consideration of the social context in which particular behavior occurs and is experienced by its target. . . . The real social impact of workplace behavior often depends on a constellation of surrounding circumstances, expectations, and relationships which are not fully captured by a simple recitation of the words used or the physical acts performed." Oncale , 523 U.S. at 81-82.

The Eleventh Circuit affirmed the constraints the magistrate placed on Ms. Holliman's case by limiting the hostile or abusive work environment to just nine acts without regard to record evidence which substantiated the commonly known reputation of Mr. Roberts to abuse female employees by use of his abrasive and militaristic management style in a humiliating, ridiculing, and insulting manner that the male employees did not have to endure, which CAU had allowed to go on for so long that female employees believed nothing would be done about it. It was within the awareness of this social context Ms. Holliman objectively and subjectively believed she was being discriminated against "because of sex." The Seventh Circuit considered the question of whether the complainant could rely on evidence outside of the EEOC charge filing period. The court noted that normally the complainant has 300 days from the occurrence of an allegedly discriminatory act to file its EEOC charge but

noted the "continuing violation doctrine" as an exception. This doctrine is designed to "accommodate plaintiffs who can show that there has been a pattern or policy of discrimination continuing from outside the limitations period into the statutory limitations period, so that all discriminatory acts committed as part of this pattern or policy can be considered ... timely." Hardin v. S.C. Johnson & Son, Inc., 167 F.3d 340, 344 (7th Cir.1999). Then the court went on to disallow statements of others outside the EEOC charge filing period where, "Ms. Hardin admittedly knew nothing of them. We note, however, that were such noxious statements relevant to the record we considered--if in fact Anderson spoke them in the workplace or to Hardin's face within the limitations period--the thrust of this opinion could be markedly different." Hardin, 167 F.3d at 345. In another Seventh Circuit case the court concluded a reasonable trier of fact could find a "general hostility to the presence of women in the workplace" based on "the sum total of plaintiff's allegations regarding the school board decree, the discriminatory comments, the increased workload, the failure to assist plaintiff, and the evidence of attempts to hinder her performance of her job duties. Haugerud v. Amery School Dist., 259 F.3d 678, 696 (7th Cir.2001).

The Eight Circuit drawing from Harris v. Forklift Systems, Inc. held the key issue "is whether members of one sex are exposed to disadvantageous terms or conditions of employment to which members of the other sex are not exposed." Kopp v. Samaritan Health System, Inc., 13 F.3d 264 (8th Cir.1993). The court found Kopp's evidence sufficient to overcome a summary judgment motion on her sexual harassment claim, because, "Albaghdadi was abusive to Samaritan employees. Over the course of more than a decade, Albaghdadi yelled at,

swore at, threatened, and physically endangered Samaritan employees. . . . More importantly for her Title VII claim, the incidents of abuse Kopp has cited in the record involve primarily women. . . . Further, the incidents involving female employees are of a more serious nature than those involving male employees." Kopp, 13 F.3d at 269.

Most recently, the Ninth Circuit held that "a pattern of abuse in the workplace directed at women, whether or not it is motivated by 'lust' or by a desire to drive women out of the organization, can violate Title VII. Indeed, this case illustrates an alternative motivational theory in which an abusive bully takes advantage of a traditionally female workplace because he is more comfortable when bullying women than when bullying men. There is no logical reason why such a motive is any less because of sex than a motive involving sexual frustration, desire, or simply a motive to exclude or expel women from the workplace." E.E.O.C. v. National Educ. Ass'n, Alaska, 422 F.3d 840, 845 (9th Cir.2005). The record supports a similar showing by Ms. Holliman. Mr. Young admitted he did not receive any complaints from any similarly situated male employees about Mr. Roberts. The male employees he cited were direct reports to him as was Mr. Roberts. The record shows while male employees acknowledged the abrasiveness of Mr. Roberts, none of them felt he was made to feel humiliated, ridiculed or insulted because of his gender as a male, or otherwise. Even Mr. Singh felt he had a normal employee-supervisor relationship with Mr. Roberts.

CONCLUSION

The bottom line is Mr. Roberts was a bully who loved to push his weight around with all employees. Did his conduct crossed the Title VII line when he used his normal abrasive and militaristic management style in a manner qualitatively different with female employees than he did with similarly situated male employees which clearly conveyed to the female employees that they were being humiliated, ridiculed and insulted because they were female? Therefore, was Mr. Roberts truly an equal opportunity abuser?

Respectfully Submitted,

Sandra Jackson Sheppard
SHEPPARD & ASSOCIATES
455 Park Avenue, S.E
Atlanta, Georgia 30312
(404) 622-5777

Attorney for Petitioner

April 2006

Supreme Court, U.S.
FILED

051326 APR 14 2006

OFFICE OF THE CLERK

2

No.

In the

SUPREME COURT OF THE UNITED STATES

EULICE M. HOLLIMAN,
Petitioner

v.

CLARK ATLANTA UNIVERSITY, INC.
NATHANIEL ROBERTS, JR.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

APPENDIX

Sandra Jackson Sheppard
Counsel Of Record
Sheppard & Associates
455 Park Avenue, S.E.
Atlanta, Georgia 30312
404-622-5777

APPENDIX

I. OPINIONS OR ORDERS

[DO NOT PUBLISH]
IN THE UNITED STATES COURT OF APPEALS
D. C. Docket No. 03-00132 CV-JEC-1
EULICE M. HOLLIMAN, and others similarly situated,
Plaintiff-Appellant, versus
CLARK ATLANTA UNIVERSITY, INC.,
Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Georgia
(January 17, 2006)

Before DUBINA and MARCUS, Circuit Judges, and
GOLDBERG*, Judge. PER CURIAM:
*Honorable Richard W. Goldberg, Judge, United States
Court of International Trade, sitting by designation.
FOR THE ELEVENTH CIRCUIT:

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
January 17, 2006
THOMAS K. KAHN
CLERK
No. 05-11887

Appellant Eulice M. Holliman ("Holliman") appeals the district court's grant of summary judgment against her in her gender discrimination action against her employer, defendant/appellee Clark Atlanta University ("Clark"), and former supervisor, defendant/appellee Nathaniel Roberts,

Jr. ("Roberts").

The issues presented on appeal are (1) whether the district court properly granted the defendants' motion to strike the declaration of Richard McLemore; and (2) whether the district court properly granted summary judgment to the defendants because Holliman could not establish a prima facie case of gender-based hostile work environment discrimination.

We review evidentiary rulings for abuse of discretion and will reverse the district court's decision only in cases where substantial prejudice exists. *See Hall v. United Ins. Co. of Am.*, 367 F.3d 1255, 1259 (11th Cir. 2004). Indeed, "[t]he district court has a range of options; and so long as the district court does not commit a clear error in judgment, we will affirm the district court's decision." *Young v. City of Palm Bay, Fla.*, 358 F.3d 859, 863 (11th Cir. 2004).

We review *de novo* a district court's order granting summary judgment, viewing the evidence in the light most favorable to the party opposing the motion. *Green v. Union Foundry Co.*, 281 F.3d 1229, 1233 (11th Cir. 2002).

After reviewing the record, reading the parties' briefs and having the benefit of oral argument, we affirm the district court's order striking McLemore's declaration and its grant of summary judgment.

AFFIRMED.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

EULICE M. HOLLIMAN Plaintiff, v. CLARK ATLANTA UNIVERSITY, INC., ET AL., Defendant(s).	CIVIL ACTION NO. 1:03-CV-132-JEC MAGISTRATE JUDGE WALKER

ORDER

The above entitled action is presently before the Court on the Magistrate Judge's Report and Recommendations [97] granting defendants' Motions for Summary Judgment [44,45]. Plaintiff filed Objections to the Report and Recommendation on February 22, 2005 [98,99]. The Court has reviewed the record and concludes that the Magistrate Judge's Report and Recommendation [97] is received with approval and adopted as the opinion and order of the Court.

IT IS HEREBY ORDERED that the Court ADOPTS the Magistrate Judge's Report and Recommendation [97] GRANTING defendants' Motions for Summary Judgment [44,45] and OVERRULING plaintiff's Objections [98,99].

SO ORDERED, this 2nd day of MARCH, 2005.

s/Julie E. Carnes, Judge
United States District Court
Northern District of Georgia

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

EULICE M. HOLLIMAN,
Plaintiff,

v. CIVIL ACTION NO.
1:03-CV-0132-JEC

CLARK ATLANTA UNIVERSITY, INC., and NATHANIEL ROBERTS, JR.,
Defendants.

MAGISTRATE JUDGE'S FINAL REPORT AND RECOMMENDATION

This case is presently before the Court on Defendant Nathaniel Roberts, Jr.'s Motion for Summary Judgment. Docket Entry [44]. Also before the Court is Defendant Clark Atlanta University Inc.'s Motion for Summary Judgment. Docket Entry [45]. Plaintiff has filed a consolidated response in opposition to both motions. Docket Entry [46]. For the reasons set forth more fully below, the undersigned RECOMMENDS that Defendants' Motions for Summary Judgment be GRANTED.

DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT

Plaintiff filed the instant lawsuit on January 16, 2003. (See Compl, Docket Entry [1]). In Plaintiff's Second Amended Complaint, Plaintiff alleges that Defendant Clark Atlanta University, Inc. ("CAU") subjected her to a hostile work environment based on her gender, in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq. ("Title VII") because Defendant Roberts, her supervisor, would verbally harass her and shout at her

in a harsh, militaristic, and demeaning tone, gesture at her in a demeaning way and stare at her with disdain. (Second Amended Compl. 81, Docket Entry [12]). Plaintiff further alleges that Defendant CAU retaliated against her in violation of Title VII after she complained about Defendant Roberts' harassment by removing some of her job duties, not properly training her on new software, and not giving her a pay increase for her position as Accounts Payable Supervisor. (See id.). In addition, Plaintiff asserts a state law claim for intentional infliction of emotional distress against Defendant Roberts based on his harassment of Plaintiff. (Second Amended Compl. 92-95). Finally, Plaintiff asserts a state law claim against Defendant CAU for negligent hiring, retention and supervision of Defendant Roberts. (See id. at Tift 96-103). In support, Plaintiff contends that, in the exercise of reasonable care, Defendant CAU should have known of Defendant Roberts' reputation for gender harassment. Plaintiff also alleges that it was foreseeable that Defendant Roberts would engage in gender harassment of subordinate female employees, yet, Defendant Roberts was hired, retained after numerous complaints, and unsupervised in his employment. (Id.). In addition, Plaintiff contends that Defendant CAU failed to do anything about Defendant Roberts even after Plaintiff complained of the harassment. (Id.).

Defendants filed the instant Motions for Summary Judgment' contending that Plaintiffs Title VII gender harassment claim fails as a matter of law because (1) the alleged harassment was not gender-related and thus Plaintiff cannot show that she was harassed *because of* her sex; (2) Plaintiff cannot show that the alleged harassment was sufficiently severe or pervasive to create an objectively hostile work environment because the harassment merely consisted of a few isolated incidents over a six-month

period; (3) Plaintiff failed to exhaust her administrative remedies with respect to her retaliation claim because she never filed an EEOC Charge on this claim or amended her original charge to include such a claim; (4) Plaintiff cannot establish a prima facie case of retaliation

> FN 1 Defendant Roberts separately moved for summary judgment on Plaintiffs intentional infliction of emotional distress claim, which was brought against him in his official capacity as Assistant Vice President and Comptroller for Finance and Administration for CAU. (See Docket Entries [12 and 13]). The Court will address both Defendants' motions for summary judgment together.

because she cannot show that she engaged in protected activity or that she suffered an adverse employment action; (5) Plaintiff cannot state a claim for intentional infliction of emotional distress because the alleged conduct was not extreme or outrageous as a matter of law, and there is no evidence that Plaintiff's alleged distress was severe; and (6) Plaintiff s negligent retention claim fails because Plaintiff cannot make out a claim for intentional infliction of emotional distress, and even if she could, Plaintiff's negligent hiring and retention claim fails because she cannot show that Defendant CAU knew or should have known of Defendant Roberts' propensity for gender harassment because any complaints about Defendant Roberts, formal or informal, referenced his tough management style and were not gender-based.

I. STATEMENT OF FACTS

Plaintiff began working for Defendant CAU on July 19, 1991, as a temporary employee in the Accounts Payable Department, and became a full-time employee one month later. (Defendants' Statement of Material Facts as to Which there is no Genuine Issue to Be Tried (hereinafter "DSMF")

¶1).[2] Richard McLemore became the Accounts

FN 2 Defendant CAU and Defendant Roberts filed separate statements of facts, which are the same, except that Defendant Roberts' statement has one additional fact (number 109). The Court will therefore treat Defendants' statement of facts as one consolidated statement. All facts taken from the Defendants' Statement of Material Facts remain undisputed. This Court must accept as admitted those facts in Defendants' Statement of Material Facts that have not been "specifically controverted" with citation to the relevant portions of the record by the opposing party. Local Rule 56.1B(2), (3), N.D., Ga.

Payable Manager and Plaintiff's immediate supervisor in February 1998. (DSMF ¶ 2). At that time, Plaintiff was an Accounts Payable Technician, primarily responsible for inputting the information and filing. Mr. McLemore also gave Plaintiff the responsibility of overseeing the department while he was investigating fraud in the department, because Plaintiff had the experience and the knowledge of the department and the operation of the university. (McLemore Dep. pp. 18-20). In this role, Plaintiff was responsible for directing all of the work that came through the department. (DSMF ¶ 4). Plaintiff eventually assumed the title of Accounts Payable Supervisor, though Mr. McLemore could not recall when that became official. (DSMF ¶ 5; McLemore Dep. pp. 32-37).

In January 1998, Defendant Nathaniel Roberts was hired by Defendant CAU to assist the University in resolving some issues relating to the administration of its student financial aid programs. (DSMF ¶ 6). Defendant Roberts previously had performed auditing services for the university for several years as an external auditor with

Clausell & Associates. (DSMF ¶ 7). In July 1998, Defendant Roberts became Defendant CAU's Assistant Vice President of Finance and Administration and Comptroller. (DSMF ¶ 8). In that position, Defendant Roberts had managerial responsibility over several accounting departments, including Accounts Payable, General Accounting, Payroll, and Cash Management and Investment. (DSMF TT 9, 11). Mr. McLemore, Plaintiff's supervisor, reported to Defendant Roberts. (DSMF ¶ 10). Bobby Young became the University's Vice President for Finance in 2000, and Defendant Roberts reported to Mr. Young. (DSMF TT 12-13). According to Plaintiff, in December 2000, Defendant Roberts began a pattern of abuse toward her. (DSMF 14; Pl. Dep. pp. 141-42)[3] Plaintiff contends that Defendant Roberts routinely spoke to

FN 3 Defendants mislabeled this fact number as a second 13. Plaintiff attempts to dispute this fact with her affidavit, in which she relays an incident in approximately August 1998 wherein Defendant Roberts spoke to her in a harsh and demeaning tone, thrusting his head from side to side with a look of disgust upon his face, and spoke to her slowly as though he was crazy. (See Pl. Aff. ¶ 15, Docket Entry [50]). Plaintiff previously testified in her deposition, however, that she kept a diary to document the abuse contemporaneously, and that the first incident of alleged harassment occurred on December 13, 2000. (See Pl. Dep. pp. 141-42, Ex. 8). In addition, Plaintiff related to the EEOC, through her charge of discrimination, that the earliest discrimination took place on December 22, 2000. (See Second Amended Compl., Ex. A). Plaintiff cannot now contradict her prior deposition testimony and sworn EEOC Charge without explanation in order to create a genuine

> issue of material fact through her affidavit submitted in response to Defendants' motions for summary judgment. See Van T. Junkins and Assocs., Inc.v. U.S. Indus.. Inc., 736 F.2d 656, 657 (11th Cir. 1984) ("When a party has given clear answers to unambiguous questions which negate the existence of any genuine issue of material fact, that party cannot thereafter create such an issue with an affidavit that merely contradicts, without explanation, previously given clear testimony."). The Court also notes that much of Plaintiff's 39 page, 92-paragraph affidavit is problematic in that it contains hearsay and thus is not based on Plaintiff's personal knowledge. See FED. R. Civ. P. 56(f).

her in a "harsh, militaristic and demeaning tone," and interacted with her in a "disdainful and disparaging manner." (DSMF ¶ 15). Specifically, during a staff meeting on December 13, 2000, Plaintiff expressed her concern to Defendant Roberts that she and her co-worker, Annette (Sullen) Ogletree, were performing the workload of four people. Plaintiff contends that Roberts responded in a harsh tone, stating that he did not care about the workload or how many people it takes because he expected them to complete the work on the 1099 forms by the January 31, 2001 deadline. (DSMF 63-64; see Pl. Dep., Ex. 8). On December 20, 2000, Defendant Roberts inquired of Plaintiff about the status of the 1099s, and Plaintiff responded that she and Ms. Ogletree had not had time to work on the project because there were only two of them and there were other various day-to-day duties, like processing checks to vendors, which had to be completed prior to the department breaking for the holidays.[4] (DSMF ¶ 65). According to Plaintiff,

FN 4 Plaintiff attempts to dispute this fact by

> changing her prior deposition testimony through her subsequent affidavit, stating that on December 21, 2000, Defendant Roberts "came to me with a crazy look on his face and he was frowning and asked me to come in his office. The look he had scared me, like he was going to attack me. Mr. Roberts inquired about the 1099's....Mr. Roberts expressed no concern about our overworked situation and spoke to me with a gloss in his eye, like a wild animal glaring at me, and in a very harsh and abrasive tone he said, 'I expect you to adhere to my deadline.' When I left his office I was so puzzled because I had never seen that look on his face before and I was scared and felt very stress [sic] by his look and attitude toward me." (Pl. Aff. ¶ 50). See supra note 3.

Defendant Roberts then stated something to the effect of, if she could not do her job, then maybe someone else needed to do it. (DSMF 66; see Pl. Dep., Ex. 8). In addition, Defendant Roberts would "nitpick" at Plaintiff by coming by her desk, picking up items in her work tray and putting them back, which intimidated Plaintiff because she did not know what Defendant Roberts was looking for and it seemed like it was a show of his authority. (DSMF ¶¶ 67-68).

On January 11, 2001, Plaintiff met with Defendant Roberts about the 1099s and assured him that she and Ms. Ogletree were working diligently to meet the January 31, 2001 deadline by working through their lunch hour and staying late, but Defendant Roberts was still rude and intimidating. (DSMF ¶ 69; see Pl. Dep., Ex. 8). Plaintiff testified that Defendant Roberts was rude because he was still raising his voice and that he was intimidating because "it didn't matter that we were working to 6:00 or 7:00. We were not doing enough. It was not

enough for him. And he wanted to see more–basically, he was almost at the point to like quit your everyday work and do this, because this is what I want done."[5] (DSMF 70).

FN 5 In response to this fact, Plaintiff states that because of Defendant Roberts' rude, aggressive and intimidating attitude and demeanor, she left his office feeling like "he really wanted to physically hurt me." (Pl. Aff. 52). This *additional* statement, however, does not *contradict* Plaintiffs deposition testimony.

On January 23, 2001, as Plaintiff was leaving the office for the day, Plaintiff observed that Saba Tesfamariam, a General Accounting employee, was trying to explain something to Defendant Roberts and he was not understanding. (DSMF 72). According to Plaintiff, Defendant Roberts intimidated Ms. Tesfamariam in front of other people because he was pacing with his finger to his head and stated to Ms. Tesfamariam, "Let me see how to make you understand water and steam make electricity."[6] (DSMF ¶ 73; see Pl. Dep., Ex. 8).

FN 6 Plaintiff adds to this account that Defendant Roberts had " a frown on his face and a crazy glare look in his eyes," but this does not *contradict* this fact, taken directly from Plaintiff's deposition testimony.

On February 14, 2001, Defendant Roberts called Plaintiff into his office after overhearing her speaking with a co-worker about going to see Mr. Young about an outside vendor who had complained that Plaintiff never returned a telephone call. (DSMF ¶ 75). Defendant Roberts then shouted at Plaintiff, "You don't go to Mr. Bobby Young and talk about anything. You do not talk to Mr. Young at all about anything. Do I make myself clear? You are not supposed to ever go to Mr. Young's office."

(DSMF ¶ 75; see Pl. Dep., Ex. 8).

On February 20, 2001, Defendant Roberts asked Plaintiff a question about a vendor and when she did not know the answer, he suggested, in a harsh tone, that she find the answer. (DSMF ¶ 76; see Pl. Dep., Ex. 8). When Plaintiff returned to Defendant Roberts' office with the answer, he was not there, so she decided to be proactive by calling the department herself, and when Defendant Roberts learned of this, he reprimanded her by stating, "Do only what I ask you to do. Take nothing upon yourself." (DSMF ¶ 77; see Pl. Dep., Ex. 8).

On March 1, 2001, Defendant Roberts approached Plaintiff at her desk to inquire about misfiled payment invoices and the following exchange occurred:

> A. . . . [Defendant Roberts] asked me is AT&T—well, he said out loud like he was talking to the whole office, 'Is AT&T and AT&T Broadband, are they the same company?' I said, 'No, they're not.'
>
> He said, 'Well, they're filed together.' And I was trying to explain to him that I was not aware that they were in the same folder, that they were applied by mistake from a previous employer. I said, 'Ms. Davis she probably didn't realize she just lumped all AT&T together.'
>
> He wouldn't let me finish explaining, and he start [sic] shouting, 'Just get this matter correct. Take care of it now.'
>
> Q. Okay. Now you say he started shouting?
>
> A. Yes.
>
> Q. How loud was he talking?
>
> A. Loud.
>
> Q. How loud?
>
> A. Loud so that the whole entire staff could hear, like I'm raising my voice to you.
>
> A. Then I tried to go on to tell him, and he would

cut me off. He didn't want to hear anything I said....

A. . . . He asked me had I seen the cable bill, I think it was for the library. I told—I replied to him that Phyllis McCrary gets the bills, and from Phyllis McCrary then it comes to our office.

He said, 'You need to be talking about the AT&T Broadband..' I said, 'I'm talking about the same thing. .. .I'm trying to explain to you—"Have you saw [sic] it or not? It's a yes or no answer.' I said, 'No.'

Q. . . . So you're saying that was embarrassing for you in front of your coworkers?

A. Yes. He was belittling me. He was intimidating me.

Q. And then you state that this is the way Mr. Roberts talks to all the staff, and he does not care whom he attacks you in front of?

A. Yes.

(Pl. Dep. pp. 117-20, Ex. 6).

On March 14, 2001, Plaintiff met with Mr. Young to complain about Defendant Roberts' conduct, and Mr. Young told Plaintiff that if she felt that strongly about the situation, she should make a complaint to HR. (Pl. Dep. pp. 111-13, 122). Plaintiff thereafter spoke with Tonya Shockley in Human Resources ("HR") for about ten minutes, and Ms. Shockley told her that she needed to put her complaint in writing. (Pl. Dep. pp. 111-13, 115, 122-24). By typewritten letter dated March 15, 2001, Plaintiff formally complained to Defendant CAU's Human Resources department about "the manner [in which] Mr. Roberts chooses to speak to the staff."[7] (DSMF ¶ 16). Although the letter is stamped received by HR on March 21, 2001, Plaintiff contends that she personally hand-

delivered a copy of the letter on March 15, 2001, to Ms. Shockley in HR and Linda Jennings, Mr. Young's secretary. (Pl. Dep. pp. 110-11, 114). Plaintiff's complaint letter to HR described Defendant Roberts as "very condescending" and explained that "[h]e never allows you to finish a sentence before cutting in and attempting

> FN 7 Plaintiff attempts to dispute this fact by taking issue with its possible "implication," and makes similar contentions in response to many other facts. Plaintiff's refutation of the implication of a fact, however, is argument, which is improper in responding to the moving party's statement of facts, and does not controvert the objective fact supported by the record that Plaintiff wrote a complaint letter to HR or the objective contents of such letter.

to make you feel inferior and stupid. Mr. Roberts seems to enjoy his military tactics." (DSMF IN 17-18; see Pl. Dep., Ex. 6). Plaintiff further described in the letter the March 1, 2001 incident over the misfiled AT&T payments. (See Pl. Dep., Ex. 6). Additionally, Plaintiff stated her concerns that she

> and other staff members find ourselves walking on eggshells all the time. This has created an unbearable work environment for others and myself. I know that there are a lot of things that need to change in the Accounts Payables Department, and I feel as a whole, we are progressing in the right direction. However, it is very difficult to do a good job when a superior is intimidating you. There have also been several occasions when talking to Mr. Roberts, I have observed the smell of alcohol on his breath and I don't know if this is also a contributing factor to

his behavior.

> I have spoken to my immediate supervisor, Mr. Richard McLemore and Mr. Roberts' supervisor, Mr. Bobby Young on March 14, 2001 about the way he talks to his staff. I am now expressing this same concern to Human Resources. I hope that this matter will be resolved and myself and the rest of the staff can get back to the business of the University.

(DSMF ¶¶ 21-24; Pl. Dep., Ex. 6). Ms. Shockley read Plaintiffs letter and the two discussed Plaintiffs complaint about Defendant Roberts for about a half hour to forty-five minutes. (DSMF ¶ 25; Pl. Dep. pp. 114-15, 124).

Defendant CAU has a sexual harassment policy, which is part of the Staff Handbook and provides, in pertinent part:

> It is the policy of Clark Atlanta University that sexual harassment and discrimination on the basis of gender will not be condoned. . . .
>
> It is the policy of Clark Atlanta University to provide each student, faculty member and staff member with an environment free from harassment.
>
> Sexual Harassment is any unwelcomed sexual advances, requests for sexual favors, or verbal or physical contact of a sexual nature that interferes with performance by creating a hostile, offensive, or intimidating work environment.

(Young Dep. pp. 116-17, 122, Ex. 1, bates 000443). Defendant CAU's sexual harassment policy further provides that an employee who feels that he or she has been the victim of sexual harassment should report the harassment to the Director of HR, either orally or in writing, within fifteen days of the alleged incident, and the

complaint will be treated confidentially and carefully investigated. (See id.). In addition, Defendant CAU has a policy on workplace harassment generally, which is distinct from the sexual harassment policy. (Young Dep. pp. 117-21, Ex. 1, bates 000498). That policy is found in the Employee Conduct Violations section of the Staff Handbook, which provides that:

> In carrying out their duties and responsibilities, all staff represent the University and as such should conduct themselves accordingly. Appropriate behavior is important at all times. The University expects staff to conduct themselves in a courteous and professional manner when interacting with students, visitors, or fellow staff and faculty members.. ..

(See Young Dep., Ex. 1 bates 0004998).

The policy further provides a non-exhaustive list of conduct violations, including "[d]iscourteous treatment of the University's constituencies—students, faculty, administrators, fellow staff members, and visitors," as well as "[t]hreatening, intimidating, coercing, or interfering with fellow employees, students, University officials, or others on University property." (Young Dep. pp. 12021, Ex. 1, bates 000498-000500). Such conduct issues are dealt with under the Complaint Resolution Procedure, which follows a different procedure than the procedure for complaining, investigating and resolving allegations of sexual harassment. (Young Dep. pp, 124-28, Ex. 1, bates 000502). Pursuant to the Complaint Resolution Procedure, the matter was forwarded to Mr. Young for resolution, as he was Defendant Roberts' supervisor and also Vice President for Finance and Administration. (DSMF ¶ 27; see Young Dep., Ex. 1, bates 000502). Mr. Young believed that Plaintiffs internal complaint triggered the Complaint Resolution Procedure,

and not an investigation under the sexual harassment policy, because Plaintiff's letter spoke of Defendant Roberts' abusive and "militaristic" management style, and did not mention disparate treatment or harassment based on sex or gender. (DSMF ¶ 26). Mr. Young met with Defendant Roberts to show him Plaintiff's internal complaint letter and to request that Defendant Roberts formally respond in writing. (DSMF ¶ 28). Defendant Roberts responded by letter dated March 27, 2001. (DSMF ¶ 29). Defendant Roberts disputed Plaintiff's characterization of the March 1, 2001 incident regarding the misfiled AT&T accounts, stating that Plaintiffs language was "inflammatory," and stating that the matter itself was "routine" and "an integral part of her duties."[8] (DSMF ¶30; see Young Dep., Ex. 3). Defendant Roberts further stated that he took Plaintiff's allegations "very seriously," especially considering that she apparently was voicing concerns for the entire staff,

> FN 8 Plaintiff s attempts to dispute this fact, which merely details the contents of Defendant Roberts' response letter, with an unresponsive, 38-page argument. Notably, Plaintiffs brief in support of her opposition to Defendants' motions for summary judgment is only 22 pages. Plaintiff's response does not dispute this fact, see supra notes 3 and 7, and appears to be an attempt to circumvent the 25-page limitation of summary judgment briefs. See Local Rule 7.1D, N.D. Ga.
>
> Additionally, in response to this fact, Plaintiff introduces a declaration of Mr. McLemore. The Court has previously ruled that this declaration be stricken pursuant to Rules 26 and 37(c) of the Federal Rules of Civil Procedure as well as Van T. Junkins and Assoc., Inc. v. U.S. Indus., Inc., 736

> F.2d 656, 657 (11th Cir. 1984) and the line of cases concerning subsequent testimony which directly contradicts earlier testimony. (See Docket Entry [96]). Defendants had called into question the ethical propriety surrounding Plaintiff obtaining Mr. McLemore's declaration, originally dated at a time when he was still employed by Defendant CAU, but subsequently amended to reflect a later date. Notably, however, it was Plaintiff who filed a Motion for Rule 11 Sanctions. The Court ordered stricken the declaration mainly because Plaintiff never supplemented discovery in accordance with the federal rules by notifying Defendants that she had such a declaration in her possession, originally dated June 3, 2004, and then an amended date of July 3, 2004, that would have been responsive to several of Defendants' discovery requests. See Br. in Support of Motion to Strike p. 7, Docket Entries [82 and 83]). Plaintiff's counsel represented that she learned of Mr. McLemore's Declaration on July 21, 2004, and received it in the mail two days later. (See Pl. Resp. to Def. Motion to Strike, Docket Entry [84]). Plaintiff, however, did not notify Defendants of this declaration until Plaintiff served them with a copy in response to Defendants' Motions for Summary Judgment, on August 2, 2004. (See Certificate of Service, Docket Entries [46] - [50]).

Though she did not identify any other employees. (DSMF ¶¶ 31-32; see Young Dep., Ex. 3). Defendant Roberts also denied the allegation of having alcohol on his breath as a "blatant untruth," which, in his opinion, was "consistent with the other exaggeration of events presented in [Plaintiffs] letter, and stated that he thought it was

"extremely important that we address this matter immediately." (DSMF ¶¶ 33-34; see Young Dep., Ex. 3).

Some time after Mach 15, 2001, Plaintiff was looking for a particular purchase order and asked Defendant Roberts' assistant, Melba Carmichael, if she had seen it. (DSMF ¶ 81). Plaintiff testified that Defendant Roberts overheard her, and came storming out of his office screaming at her, "Do you know what it takes to get a purchase order paid?" (DSMF ¶ 82). Defendant Roberts then began explaining to Plaintiff how to pay a purchase order, got a purchase order and started "beating it," stating, "These are the steps to getting a purchase order paid." (DSMF ¶ 83). Plaintiff felt humiliated in front of Ms. Carmichael and ran off to go cry somewhere where Defendant Roberts would not see her. (DSMF ¶ 84).

On May 29, 2001, Plaintiff went to Defendant Roberts' office and attempted to write some information on the back of a check and Defendant Roberts took out a piece of paper and wrote FOAPAL,[9] and stated, "This is how you write it," in an "abrasive tone." (DSMF ¶ 85; see Pl. Dep., Ex. 8).

FN 9 FOAPAL is an acronym that stands for Fund, Origin, Account, Program, and Activity. (DSMF 86).

On June 19, 2001, Defendant Roberts chastised Plaintiff upon learning that in May 2000, she had gone over his and her manager's heads to HR to discuss her leave of absence request. (DSMF ¶ 87). Defendant Roberts told Plaintiff; "You are not to go to HR. You are to address your manager and me." (DSMF ¶ 88). Plaintiff then informed Defendant Roberts that she had the right to talk to HR about her leave and that her manager, Mr. McLemore, was aware that she was going to HR. (DSMF ¶ 89). Defendant Roberts replied, "I might be

wrong, but then I'll just be wrong." (DSMF ¶ 90).

Plaintiff did not bring any further complaints about Defendant Roberts to Mr. Young or HR. (DSMF ¶ 37). On June 22, 2001, Plaintiff filed an EEOC Charge of discrimination. (DSMF 38; see Second Amended Compl., Ex. A).

Other employees of Defendant CAU have described Defendant Roberts' as abrasive and unprofessional. Specifically, Teja Singh, the former Director of Grants and Contracts for Defendant CAU and then later Director of Accounting, testified that Defendant Roberts would shout at him, and that Defendant Roberts had communication problems, an aggressive management style, and overall poor people skills. (DSMF ¶ 42; Singh Dep. pp. 23, 41-42). Mr. Singh also testified that there were times when he felt that Defendant Roberts demeaned him. (DSMF 41). Pam Pressley described Defendant Roberts as "charming, nice guy" some times, and twenty minutes later, "he'd be like Hitler foaming at the mouth and. . .barking orders and expecting people to jump." (Pressley Dep. p. 34). Ms. Pressley further states that if Defendant Roberts could not find an invoice because it was misfiled, "he was just brutal. Small mistakes were not tolerated." (Pressley Dep. p. 35). Ms. Pressley also testified that Defendant Roberts did not treat the men with the same "brutal attitude" as he did with the women, but acknowledged that the office was predominantly women. (Pressley Dep. pp. 34-38). However, Ms. Pressley did testify that "if there were [sic] a guy who suffered treatment similar to what the women suffered, I would say Teja [Singh] had probably something that was closer to being treated that way than anybody else. Nate [Roberts] could be very disrespectful to Teja." (DSMF ¶ 46). Marinetta Blalock also noted that Defendant Roberts was

"belligerent," he would "talk down" to Mr. Singh, and Mr. Singh would not fight back and would simply try to do what was asked of him and move on. (DSMF ¶ 49; Blalock Dep. p. 23). David Alexander, Director of Facilities, complained about the way that Defendant Roberts communicated with him, stating that Defendant Roberts was harsh and sarcastic in his tone and demeanor. (DSMF ¶ 43). Toyah Ellis testified that she observed that Defendant Roberts was "abrasive" with the male employees in the Grants and Contracts department and that Defendant Roberts is "an abrupt and abrasive person; that's who he is." (DSMF ¶¶ 47-48). Darayl Givens, who handled all the administrative processes for the grants in the Grants and Contracts department under Mr. Singh, testified that Defendant Roberts had an "authoritative type of personality, heavy-handed type...." (Givens Dep. pp. 7, 10, 18). Mr. Givens observed Defendant Roberts speak to Mr. Singh in a harsh manner, raising his voice. (DSMF ¶ 51; Givens Dep. p. 22). Mr. Givens also testified that Defendant Roberts could be very short and impatient with people and could be abrasive. (DSMF ¶ 52; Givens Dep. pp. 24-25). Additionally, Mr. Givens observed that a male employee in the Grants and Contracts department, Kif Gebreab, was, on a few occasions, visibly "heated" after meeting with Defendant Roberts. (DSMF ¶ 53; Givens Dep. pp. 36-37). Defendant Roberts has also "got loud . . . for some reason or another" with Mr. Givens, and has repeated questions, because Defendant Roberts "does that a lot." (DSMF ¶¶ 55-56). Overall, Mr. Givens testified that in his opinion, Defendant Roberts was "not well liked" because of his personality and management style, in that he was "overbearing" with both male and female employees. (Givens Dep. pp. 37-38). Ms. Ellis likewise testified that Defendant Roberts was not liked by anyone at

the university, men or women. (DSMF ¶ 59). Paula Barnes was an accountant in the General Accounting department, and Defendant Roberts was her direct supervisor. (Barnes Dep. pp. 6-7). Ms. Barnes described Defendant Roberts as "just a really nasty, negative person. . . His personality was just terrible." (Barnes Dep. p. 15). Ms. Barnes further testified that Defendant Roberts "was disrespectful in the way that he spoke to me," based on his "tone of voice and the words, talking to me as if I'm a delinquent child or something instead of a coworker." (Barnes Dep. p. 20). Ms. Barnes thought that Defendant Roberts might have been nasty to her "because he didn't have a role in hiring me. ..and maybe he just didn't want me in the office," but she "never thought about it as a male/female thing." (Barnes Dep. p. 17). Patrick Thomas, an employee in the Grants and Contracts department, had "personality conflicts with [Defendant Roberts]." (DSMF ¶ 54). Annette Ogletree testified that Defendant Roberts was impossible to please, because "he was always finding something wrong with what we were doing, and no matter how hard we worked or how late we stayed, he was always finding something wrong with the performance of what was going on in the accounts payable as a whole." (Ogletree Dep. p. 25). Ms. Ogletree also testified that Defendant Roberts spoke to people as if they were in "fifth grade," and repeat questions "two or three times until maybe he got the answer he felt he was looking for or maybe it was answered in the way that he was looking for it to be answered," which he did to both male and female employees. (Ogletree Dep. pp. 15, 44-45). Ms. Ogletree further testified that in her observation, not many employees, men and women, who worked for Defendant Roberts "cared for him." (Ogletree Dep. pp. 104-05). Thomas Poitier, the Controller from 1997-

1998 and then Associate Vice President for Banner Implementation (software), testified that he did not allow Defendant Roberts to verbally abuse him, but that Defendant Roberts had been "verbally confrontational" with him and that Defendant Roberts had "attitude problems." (Poitier Dep. pp. 7, 19-20). Mr. Young himself observed Defendant Roberts on one occasion get "loud and short and flipp[ant], totally unprofessional" in a meeting wherein there was a discussion about whether or not the president should have been in attendance. (DSMF ¶ 45). In addition, Mr. Young noted that Defendant Roberts "exhibited a hard militaristic [leadership] style," and "he didn't give the mutual respect required." (DSMF ¶ 57).

Plaintiff testified that there came a time when Defendant Roberts stopped interacting with her, stopped speaking to her, and would stare at her as he walked past her desk on his way to his office. (DSMF ¶¶ 98-99; Pl. Dep. pp. 199-206). Plaintiff testified that she felt uncomfortable because Defendant Roberts would direct questions about work to other members of the staff, and Plaintiff was concerned that it would seem that she was not fulfilling her job as the supervisor. (Pl. Dep. pp. 206-07). Some time around August or September 2001, Mr. McLemore reassigned some of Plaintiff's duties to another employee, and explained to Plaintiff that because "Mr. Roberts was having a problem with everything [she] did....[this] would keep Mr. Roberts off of [her] back." (DSMF ¶¶ 95-96). Specifically, Plaintiff had very little data entry to enter, and she no longer directed the work flow anymore or ran the monthly reports to make sure that everything was balanced. (DSMF ¶¶ 100-01; Pl. Dep. pp. 208-11). Additionally, Plaintiff was no longer permitted to work extra hours during a busy time of the

year, and was required to fill out leave slip forms when reporting back to work from a doctor's appointment. (DSMF ¶¶ 102-03). Plaintiff also testified that she received basic training on new software but did not receive additional training recommended in a meeting, though she acknowledged that there were not enough funds to get the additional training. (DSMF ¶ 97; Pl. Dep. pp. 233-34). Ms. Ogletree testified that after Plaintiff filed her EEOC charge, there was no change in the way that Defendant Roberts interacted with Plaintiff, but that he had less contact with her. (Ogletree Dep. pp. 89-90). Ms. Ogletree further testified that she became the contact person for Defendant Roberts in Mr. McLemore's absence, "report[ing] to [Defendant Roberts] in reference to maybe the cash that we needed for that week to run checks or anything that was going on within the day-to-day operations within accounts payable," because Defendant Roberts and Plaintiff were having "conflict problems." (Ogletree Dep. p. 90; see also id. at 146-47, 149-51, 165-66, 176-77). Ms. Ogletree also testified that she observed that Plaintiff was not upset and actually appeared relieved that she did not have to have as much contact with Defendant Roberts. (Ogletree Dep. pp. 91-92, 160-61).

On August 28, 2001, Plaintiff received her annual performance evaluation from her supervisor, Mr. McLemore, for the period of July 1, 2000 through June 30, 2001. (Pl. Dep. pp. 215-21, Ex. 12). Mr. McLemore gave Plaintiff a rating of "meets expectations" in almost every category: job knowledge, teamwork, problem solving, accountability, human relations, work quality, communications, adaptability/ flexibility, attitude/motivation, and attendance. (See Pl. Dep., Ex. 12). Plaintiff testified that she initially was rated "partially meets expectations" in some of these categories but after a discussion with Mr. McLemore, he raised those

categories to "meets expectations." (Pl. Dep. pp. 216-20). Plaintiff was rated "partially meets expectations" in planning and organizing, receiving the comment that "[t]his area requires additional work with emphasis on the daily scanning of documents and file storage. Additionally, more focus should be addressed to monitoring vendors calls and payment recommendations." (See Pl. Dep., Ex. 12). Plaintiff also received a rating of "partially meets expectations" for punctuality, receiving the comment she "had a great deal of excused tardiness during the fiscal year. More effort should be made to insure that punctuality is not a topic for discussion. An action plan to showing how this deficiency will be addressed is needed for this area. Please note that all warnings in the future for tardiness will be written." (See Pl. Dep., Ex. 12). Plaintiff wrote a letter to Mr. McLemore, dated August 31, 2001, expressing her disappointment with her final evaluation because she thought that she deserved "exceeds expectations" in some categories and that the ratings of "partially meets expectations" were undeserved. (Pl. Dep. pp. 223-32, Ex. 13).

On September 27, 2001, Defendant Roberts received his annual performance evaluation from Mr. Young, and in the area of "Leadership Effectiveness" and "Leadership Efficiency," under the section, "People Management Assessment," Defendant Roberts was rated "partially meets expectations." (DSMF ¶ 35; see Young Dep., Ex. 4, bates 000289-000290). Mr. Young, after concluding his investigation into Plaintiff's HR complaint about Defendant Roberts, decided to adopt HR's recommendation that Defendant Roberts be directed to attend specific Employee Assistance Program ("EAP") training courses to address his conduct and how he interacted with others. (DSMF ¶35-36; Young Dep. pp. 176-77, Ex. 4). Specifically, Mr.

Young recommended that Defendant Roberts attend EAP training in the areas of Employee performance issues, performing and preparing work counseling interviews, and follow-up procedure, in part because of Plaintiffs complaint. (Young Dep. pp. 176-77, Ex. 4).

Plaintiff testified that she "may have" told Defendant Roberts in 2000 that she was diagnosed with Lupus, and had a brief conversation with him about her health on her last day before going on leave on April 27, 2001. (Pl. Dep. p. 315). Plaintiff did not, however at any time between December 2000, and up to the time of her complaint to HR in March 2001, tell Defendant Roberts to leave her alone, that he was stressing her out, that his conduct was adversely affecting her medical condition, or anything of that nature. (DSMF ¶ 109; Pl. Dep. pp. 315-16). Additionally, Plaintiff never discussed with Defendant Roberts her EEOC charge or the fact that she filed such a charge, and Defendant Roberts did not learn about Plaintiff's EEOC charge until the date of his July 15, 2002 performance evaluation. (DSMI ¶¶ 105-07). With regard to Defendant Roberts' 2002 evaluation, for the time period of June 2001 through June 30, 2002, Mr. Young found that Defendant Roberts' performance had declined in the areas of adaptability/flexibility, people management, leadership effectiveness, organizational protocol, and financial reporting, and as a result, Mr. Young placed Defendant Roberts on a performance improvement plan. (Young Dep. pp. 180-81, Ex. 7). In October 2002, Mr. Young followed up with HR to see if Defendant Roberts had contacted HR to schedule the EAP training. (Young Dep. p. 187). When Mr. Young learned that Defendant Roberts had not called HR to schedule the EAP training, in conformity with his performance improvement plan, Mr. Young began to discuss with HR terminating Defendant Roberts.

(Young Dep. pp. 187-89). Additionally, Mr. Young had continued to hear complaints from employees about Defendant Roberts' rudeness and sarcasm. (Young Dep. pp. 189-90). Mr. Young terminated Defendant Roberts in November 2002 based, in part, on Defendant Roberts' failure to participate in the required EAP training to correct his management style and the way that he talked to people. (DSMF ¶58; Young Dep. pp. 91-103, 178-180, Ex. 5).

II. CONCLUSIONS OF LAW

A. Summary Judgment Standard

A motion for summary judgment shall be granted "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law." FED. R. CIV. P. 56(c). At the summary judgment stage, the court must examine all evidence in the light most favorable to the non-moving party and resolve all reasonable doubts in his favor. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986); Pipkins v. City of Temple Terrace, 267 F.3d 1197, 1199 (11th Cir. 2001).

On a motion for summary judgment, "the moving party bears the initial burden to show, by reference to materials on file, that there are no genuine issues of material fact to be determined at trial." Mullins v. Crowell, 228 F.3d 1305, 1313 (11th Cir. 2000) (citing Clark v. Coats & Clark. Inc., 929 F.2d 604, 608 (11th Cir. 1991)). Once the movant has shown the non-existence of any genuine issue of material fact, it is up to the Plaintiff to produce some evidence in support of his claim. Anderson, 477 U.S. at 252. Mere conclusory allegations of discrimination or harassment are not enough to withstand a motion for summary judgment. Carter v. City of Miami, 870 F.2d 578, 585 (11th Cir. 1989). In other words, "the mere existence of

some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact." Anderson, 477 U.S. at 247-48. An issue is not genuine if it is unsupported by evidence or if it is created by evidence that *is* "merely colorable" or "not significantly probative." Id. at 250. Likewise, a fact is only material if it is so designated by controlling substantive law as an essential element of Plaintiffs case. Id. at 248.

If neither party can prove the existence or nonexistence of an essential element of a claim, summary judgment will be granted if the movant shows that the Plaintiff will be unable to meet her burden of proof at trial. Celotex Corp. v. Catrett, 477 U.S. 317, 325 (1986). The movant's burden therefore requires a "'showing'-- that is, pointing out to the district court that there is an absence of evidence to support the nonmoving party's case." Id. The nonmovant's failure to offer proof of an essential element to her case renders all facts immaterial, thus entitling the movant to judgment as a matter of law. Id. at 323.

B. Plaintiff's Title VII Sexual Harassment Claims

Plaintiff contends that she was subjected to a hostile work environment based on her gender because Defendant Roberts' conduct toward her was "abrasive, harsh, disrespectful, condescending, intimidating, demeaning, sarcastic, unprofessional" and he exhibited a "rude personality and mannerisms." The Court concludes, as more fully discussed below, that Plaintiff cannot establish a prima facie case of sexual harassment.

Title VII of the Civil Rights Act of 1964 prohibits an employer from "discriminat[ing] against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin." 42 U.S.C. §

2000e-2(a)(1). Title VII claims require proof of intentional discrimination. See Standard v. A.B.E.L. Servs., Inc., 161 F.3d 1318, 1330 (11th Cir. 1998). Sexual harassment is a type of sex discrimination prohibited by Title VII, and may be in the form of *quid pro quo* harassment, which is 'based on threats which are carried out' or fulfilled," or hostile work environment sexual harassment, "which [is] based on 'bothersome attentions or sexual remarks that are sufficiently severe or pervasive to create a hostile work environment.' Gupta v. Fla. Bd. of Regents, 212 F.3d 571, 582 (11th Ch. 2000) (quoting Burlington Indus., Inc. v. Ellerth, 524 U.S. 742, 751 (1998)); see also Mentor Svgs. Bank FSB v. Vinson, 477 U.S. 57, 64 (1986). However, courts should not be constricted by these terms when analyzing an employer's liability on an employee's Title VII claim concerning a supervisor's sex-based harassment. Frederick v. Sprint/United Mgmt. Co., 246 F.3d 1305, 1311 (11th Cir. 2001) (citing Ellerth, 524 U.S. at 753, 765; Faragher v. City of Boca Raton, 524 U.S. 775, 807 (1998). Instead, "courts should separate these cases into two groups: (1) harassment which culminates in a 'tangible employment action,' such as discharge, demotion or undesirable reassignment, and (2) harassment in which no adverse 'tangible employment action' is taken but which is sufficient to constructively alter an employee's working conditions." Id. (quoting Ellerth, 524 U.S. at 761-63, 765; see also Faragher, 524 U.S. at 790, 807; Johnson v. Booker T. Washington Broadcasting Serv. Inc., 234 F.3d 501, 508 (11th Cir. 2000) (recognizing shift in terminology)); Accord Mangrum v. Republic Indus. Inc., 260 F. Supp. 2d 1229, 1248 (N.D. Ga. 2003). Plaintiff is asserting the second type, that Defendants created a hostile work environment based on her gender which was severe and pervasive such that it constructively altered the terms and

conditions of her employment. Ellerth, 524 U.S. at 754 (citing Oncale v. Sundowner Offshore Servs., Inc., 523 U.S. 75, 81 (1998) (allegations of sexual harassment should be treated as hostile work environment and not *quid pro quo* where there was no tangible adverse employment action because threats were unfulfilled)); Harris v. Forklift Sys., Inc., 510 U.S. 17, 21 (1993).

In order to make out a prima facie case of a hostile work environment based on gender harassment, a plaintiff must show that (1) she belongs to a protected group; (2) she was subjected to unwanted gender harassment; (3) the harassment complained of was based upon her sex; (4) the harassment complained of affected a term, condition, or privilege of her employment; and (5) a basis for holding the employer liable. Watson v. Blue Circle, Inc., 324 F.3d 1252, 1257 (11th Cir. 2003) (citing Mendoza v. Borden, Inc., 195 F.3d 1238, 1245 (11th Cir. 1999) *(en banc))*; Henson v. City of Dundee, 682 F.2d 897, 903-05 (11th Cir. 1982).

Usually, actionable sexual harassment "involves patterns or allegations of extensive, long-lasting, unaddressed, and uninhibited sexual threats or conduct that permeated the . . . work environment." Gupta v. Fla. Bd. of Regents, 212 F.3d 571, 586 (11th Cir. 2000), cert. denied, 531 U.S. 1076 (2001) (quoting Indest v. Freeman Decorating, Inc., 164 F.3d 258, 264 (5th Cir. 1999) (citations omitted)). Consequently, "simple teasing, offhand comments, and isolated incidents unless extremely serious will not amount to discriminatory changes in the terms and conditions of employment." See Faragher, 524 U.S. at 788 (explaining that complaints objecting to the ordinary tribulations of the workplace including the sporadic use of abusive language, gender-related jokes, and occasional teasing are not actionable); Harris, 510 U.S. at 21. Further, statements and conduct in support

of gender-based hostile work environment claim

> must be of a sexual or gender-related nature - 'sexual advances, requests for sexual favors [or] conduct of a sexual nature' . . . before they are considered in determining whether the severe or pervasive requirement is met. Innocuous statements or conduct, or boorish ones that do not relate to the sex of the actor or of the offended party are not counted.

Gupta, 212 F.3d at 583 (quoting Mendoza, 195 F.3d at 1245); Hudson v. Norfolk S. KR. Co., 209 F. Supp. 2d 1301, 1316 n.19 (N.D. Ga. 2001) ("Title VII does not prohibit 'harassment' in and of itself [and] certainly does not prohibit all behavior an employee may find to be unpleasant or annoying."). By way of example, conduct which "ridicules women or treats them as inferior" can constitute gender harassment. Sims v. Montgomery County 766 F. Supp. 1052, 1073 (M.D. Ala. 1991). However, the plaintiff must prove that her sex or gender was the underlying reason for the alleged harassment she suffered. Succar v. Dade County Sch. Bd., 229 F.3d 1343, 1345 (11th Cir. 2000) (holding that the "harassment of [plaintiff] was motivated not by his male gender, but rather by [the harasser's] contempt for [plaintiff] following their failed relationship; [Plaintiff's] gender was merely coincidental").

Defendant CAU argues that Plaintiff cannot make out the second prong of her prima facie case because her allegations of harassment are not gender related. Specifically, Defendant CAU argues that the record evidence demonstrates that Defendant Roberts had an abrasive and militaristic personality and management style with all employees, male and female, and therefore Plaintiff was not specifically targeted because of her gender.

Applying the law to the facts of this case, the Court

agrees with Defendant CAU in that Plaintiff cannot make out the second prong of her prima facie case because none of Defendant Roberts' comments or conduct was gender-specific or beared any relation to Plaintiffs protected status as a woman. Defendant Roberts' comments and conduct toward Plaintiff, when taken as a whole, would not, according to a reasonable person, rise to the level of a hostile work environment for gender harassment. Indeed, several employees testified that Defendant Roberts was simply a nasty individual, who talked down to people and was not well-liked by men or women. (See DSMF ¶¶ 45, 47-48, 52, 57, 59; Givens Dep. pp. 7, 10, 18, 24-25, 37-38; Barnes Dep. pp. 15, 17, 20). Plaintiff's subjective interpretation that Defendant Roberts' criticism or hostility toward her was based on her gender is unsupported by the record. Plaintiff impliedly suggests that Defendant Roberts' conduct may have differently affected female employees, and that such evidence supports her argument that Defendant Roberts harassed her because she is female. Although it is proper to elicit evidence of whether the alleged harasser's management style was more offensive to female employees than male employees, this inquiry necessarily addresses the second prong of a plaintiffs prima facie case, that is, whether the harassment was based on gender. See Cross v. State of Ala.. State Dep't of Mental Health & Mental Retardation, 49 F.3d 1490, 1505 (11th Cir. 1995). However, "where the conduct complained of is equally offensive to male and female workers.... [t]he sexual harassment would not be based upon sex because men and women are accorded like treatment." Henson, 682 F.2d at 904. The record in this case shows that Defendant Roberts was harsh and disrespectful toward male employees, such as Mr. Singh, Mr. Alexander, and Mr. Givens, and that Defendant Roberts' abrasive and authoritative management style was exemplified by

Defendant Roberts raising his voice and repeating his questions. (DSMF ¶¶ 41-43, 49, 51-56; Givens Dep. pp. 7, 10 18, 22, 37-38; Ogletree Dep. pp. 15, 44-45). Thus, Plaintiff's asserted harassment was not based on her gender because men and women were accorded like treatment, and the evidence shows that Defendant Roberts was not well-liked by men or women. (See DSMF ¶ 59; Givens Dep. pp. 37-38; Ogletree Dep. pp. 104-05; Poitier Dep. pp. 7, 19-20). Moreover, the record more readily supports an inference that Defendant Roberts directed criticism and hostility at Plaintiff, not because of her gender, but because he did not believe that she was doing her job effectively, or at least to his satisfaction, because he was the type of person that liked things done a particular way–his way. (DSMF ¶¶ 16-18, 30, 63-66, 69-70, 75-77; Pressley Dep. pp. 34-35; see Pl. Dep. pp. 117-20, Exs. 6, 8; Young Dep., Ex. 3). Although the record supports tension between Plaintiff and Defendant Roberts, "[p]ersonal animosity is not the equivalent of sex discrimination and is not proscribed by Title VII. The plaintiff cannot turn a personal feud into a sex discrimination case by accusation." McCollum v. Bolger, 794 F.2d 602, 610 (11th Cir. 1986) (footnote citations omitted).

Notably, Plaintiff never mentioned in her complaint letter to HR that she believed that Defendant Roberts treated her differently or harassed her because she is female. Rather, Plaintiff's letter mentions only that Defendant Roberts was militaristic and "very condescending," never allows someone to finish their sentences, making people feel inferior and stupid, and that she and "other staff members" "walk[] on eggshells all the time." (DSMF ¶¶ 17-18, 21-24; see Pl. Dep., Ex. 6). The gender-neutral nature of Plaintiff's complaints further indicate that Plaintiff's allegations that she was

harassed because• she is female is merely an unsubstantiated suspicion that Defendant Roberts' allegedly abusive treatment was based on sex, as opposed to her job performance or because of his autocratic management style. See Joens v. John Morrell & Co., 354 F.3d 938, 941-42 (8th Cir. 2004) (holding that there was no evidence that harasser yelled and swore at plaintiff because of her sex, as opposed to her work performance, or that he treated her less favorably than he treated male employees, especially in light of plaintiff's gender-neutral complaints to her employer). Moreover, Plaintiff also suggests that a possible reason for Defendant Roberts' behavior may be due to an alcohol problem. (See Pl. Dep., Ex. 6). Thus, even when viewing the material facts in the light most favorable to Plaintiff, Defendant Roberts' alleged harassment of the Plaintiff is not shown to be the result of the Plaintiff's gender and Plaintiff has provided no evidence to suggest otherwise. See Henderson v. Leroy Hill Coffee Co.. Inc., 2001 WL 103147, at *7 (S.D. Ala. Jan. 30, 2001) (citing Henson, 682 F.2d at 904).

Defendant also argues that even if all of the alleged conduct can be considered gender harassment as a matter of law, Plaintiff cannot meet the fourth prong of her prima facie case. Specifically Defendant argues that the nine allegedly harassing incidents over a six -month period from December 13, 2000, through June 19, 2001, are too isolated over a relatively short period of time to rise to the level of severe and pervasive.

In order to meet the fourth prong of the prima facie case, a plaintiff must demonstrate that the defendant's actions were so severe and pervasive that they altered the terms and conditions of his employment and created an objectively abusive atmosphere. Edwards v. Wallace Cmty. Coll., 49 F.3d 1517, 1521 (11th Cir. 1995). A plaintiff must establish a subjective and an objective

component: that she perceived the environment as hostile and abusive and that a reasonable person would perceive the environment to be hostile and abusive. Faragher v. City of Boca Raton, 524 U.S. 775, 788 (1998); Mendoza, 195 F.3d at 1246. Because the plaintiff obviously perceives the environment as hostile and abusive, the relevant inquiry focuses on whether the actions of the defendant altered the working condition to such an extent that a reasonable person would find the atmosphere hostile and abusive. Harris, 510 U.S. at 22-23. In making this determination, the courts look at "the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance." Id. at 23; see also Mendoza, 195 F.3d at 1245; Edwards, 49 F.3d at 1521-22. However, the courts must also evaluate the severity and pervasiveness of the harassment in the totality of the circumstances; no one factor alone is determinative. Harris, 510 U.S. at 23.

Applying the law to the facts of this case, Plaintiff cannot establish the fourth prong of her prima facie case, because Defendant Roberts' alleged conduct was not sufficiently severe or pervasive to establish the existence of an actionable hostile work environment. The alleged conduct in this case was isolated and not extremely serious. First, as discussed above, Plaintiff's allegations are not gender-related and therefore cannot be considered in support of a gender harassment claim. See Gupta, 212 F.3d at 583; Mendoza, 195 F.3d at 1245; Hudson, 209 F. Supp. 2d at 1316 n.19. Further, even if the alleged harassment was gender-based, such conduct was not sufficiently severe, threatening or humiliating and was too sporadic to create an objectively hostile work environment. Compare Cross, 49 F.3d at 1495, 1497, 1501 (finding that

conduct was severe where a supervisor was very angry and hostile, glared at female employees, pounded on the desk, pointed his finger, threw objects at female employees including a lit cigarette, verbally abused female employees making them cry, and made disparaging comments to females, labeling them as "rather dumb," "stupid," or "just a woman."), and Watson v. Blue Circle Inc., 324 F.3d 1252, 1262 (11th Cir. 2003) (finding that defendant's conduct was severe where he brushed his hand across the plaintiff s buttocks, offered her money to have sex with him, grabbed plaintiffs hand and told her that he wanted to 'eat her', grabbed her by the wrists and shoved her, patted plaintiff s breast, tailgated her, and attempted to throw her in concrete); Dees v. Johnson Controls World Servs., Inc., 168 F.3d 417, 418-19 (11th Cir. 1999) (finding that co-workers' conduct was severe when they subjected plaintiff to abuse almost daily for three years and told sexually explicit stories and jokes, commented about plaintiffs body or those of male firefighters, grabbed or slapped plaintiff's buttocks, groped her leg, or otherwise touched her in a sexually suggestive manner), with Gupta, 212 F.3d at 585 (even assuming supervisor stared at plaintiff twice, touched her ring and bracelet once, placed his hand on her knee once, touched the hem of her dress once, and kept asking her to lunch was sexual in nature, conduct was not severe, threatening, or humiliating).

In this case, Plaintiff alleged that Defendant Roberts began his pattern of harassment against her in December 2000, and that such harassment continued through June 2001, articulating about nine incidents of harassment. As compared with the cases cited above, the conduct alleged here only involved isolated incidents that were not physically threatening, humiliating or severe enough to create an objectively hostile work environment.

Although Plaintiff states in her affidavit that she feared for her physical safety, (see Pl. Aff. ¶ 52), such fear was not objectively reasonable based on the facts of this case. The bare bones of Plaintiff's allegations are simply that Defendant Roberts criticized Plaintiffs work performance, arguably in a non-constructive way, and perhaps a bit belittling. However, the fact that Defendant Roberts raised his voice and exhibited a militaristic, rigid, management style does not indicate that he was physically threatening. Further, job performance criticism from a supervisor or manager is a common vicissitude of life in the working world, even if harsh or unjustified. Specifically,

> Employer criticism, like employer praise, is an ordinary and appropriate feature of the workplace. Expanding the scope of Title VII to permit discrimination lawsuits predicated only on unwelcome day-to-day critiques and assertedly unjustified negative evaluations would threaten the flow of communication between employees and supervisors and limit an employer's ability to maintain and improve job performance. Federal courts ought not be put in the position of monitoring and second-guessing the feedback that an employer gives, and should be encouraged to give, an employee. Simply put, the loss of prestige or self-esteem felt by an employee who receives what he believes to be unwarranted job criticism or performance review will rarely--without more--establish the adverse action necessary to pursue a claim under Title VII's anti-discrimination clause.

Davis v. Town of Lake Park, 245 F.3d 1232, 1242 (11th Cir. 2001) (footnote omitted).

Additionally, Plaintiffs nine incidents of harassment over six months from December 2000

through June 2001—speaking in a harsh tone, nitpicking, saying if she could not do her job then maybe someone else should, yelling at her for going over his head to Mr. Young, reprimanding her for doing more than he asked on a task, cutting her. off and shouting at her for misfiled invoices, abrasively and demeaningly describing how to do tasks, and yelling at her for going over his head to HR to discuss her leave–are not sufficiently severe. Furthermore, these incidents are too sporadic to be pervasive, as matter of law, to alter the conditions of Plaintiff's employment and create an actionable hostile work environment. Although Plaintiff now attempts to argue that the harassment began as early as 1998, when Defendant Roberts was hired by Defendant CAU, such argument is not supported by the record. (See DSMF ¶14; Pl. Dep. pp. 141-42; Second Amended Compl. ¶ 10, Ex. A)). Even if some harassment occurred in 1998, the incidents of harassment which Plaintiff contemporaneously recorded in her journal and to which she testified would be spread out over an even longer period of time, making the harassment seem even more isolated and negating an inference that the harassment was pervasive. Moreover, if the alleged harassment began in early 1998, Plaintiff would have endured the alleged harassment for approximately a year and a half before reporting Defendant Roberts' conduct, calling into question Plaintiff's subjective belief that she was being harassed because of her gender as well as the objective severity of the alleged harassment. Accordingly, based on the foregoing, Defendants' Motions for Summary Judgment as to Plaintiffs Title VII gender harassment claims should be GRANTED.

C. Plaintiffs Title VII Retaliation Claim

Plaintiff argues that Defendant CAU retaliated against her for complaining about Defendant Roberts' harassment to HR by treating her more negatively, no longer talking to

her, staring at her, and removing her supervisory duties. Defendant CAU contends that Plaintiff failed to exhaust her administrative remedies on her retaliation claim because she never amended her EEOC charge to include such a claim, and in any event, Plaintiff's complaint to HR did not constitute protected activity within the meaning of Title VII. In addition, Defendant argues that Plaintiff cannot show that she suffered an adverse employment action.

1. Exhaustion of Administrative Remedies and Scope of Plaintiffs EEOC Charge

Before filing a private civil action under Title VII, a plaintiff must satisfy certain statutory prerequisites such as timely filing a charge of discrimination with the EEOC "within one hundred and eighty days after the alleged unlawful employment practice occurred[.]" 42 U.S.C. § 2000e-5(e)(1); National RR. Passengfl, 536 U.S. 101, 109 (2002); Pijnenburg v. West Ga. Health Sys., Inc., 255 F.3d 1304, 1305 (11th Cir.), reh'g denied, 273 F.3d 1117 (11th Cir. 2001). "[I]f a plaintiff fails to file an EEOC charge before the 180-day limitations period, the plaintiff's subsequent lawsuit is barred and must be dismissed for failure to exhaust administrative remedies. Thomas v. Alabama Council on Human Relations. Inc., 248 F. Supp. 2d 1105, 1114-16 (M.D. Ala. 2003) (citing Brewer v. Alabama, 111 F. Supp. 2d 1197, 1204 (M.D. Ala. 2000)). The timely filing of an EEOC charge, however, "like a statute of limitations, is subject to waiver, estoppel and equitable tolling." Forehand v. Florida State Hosp. at Chattahoochee, 89 F.3d 1562, 1570 n.17 (11th Cir. 1996) (quoting Zipes v. Trans World Airlines, Inc., 455 U.S. 385, 392 (1982)); see also Fouche v.Jekyll Island State Park Auth., 713 F.2d 1518, 1525 (11th Cir. 1983) ("[A]ll Title VII procedural requirements to suit are henceforth to be viewed as conditions precedent to suit rather than as

jurisdictional requirements."); Pinkard v. Pullman-Standard, 678 F.2d 1211, 1216 (5th Cir. Unit B 1982) ("[T]he receipt of a right-to-sue letter is not a jurisdictional prerequisite, but rather is a condition precedent subject to equitable modification."), cert. denied, 459 U.S. 1105 (1983).

Additionally, procedural technicalities should not stand in the way of Title VII complainants. Although a plaintiffs failure to include allegations of a particular type of discrimination or discriminatory act in her EEOC charge should not necessarily preclude a judicial complaint based on such allegations, "the 'scope' of the judicial complaint is limited to the 'scope' of the EEOC investigation which can reasonably be expected to grow out of the charge of discrimination." Sanchez v. Standard Brands. Inc., 431 F.2d 455, 466 (5th Cir. 1970) (quoting King v. Georgia Power Co., 295 F. Supp. 943, 947 (N.D. Ga. 1968)); see also Chandha v. Engelhardt/ICC, 234 F.3d 1219, 1225 (11th Cir. 2000) (footnote omitted); Watson v. Bally Mfg. Corp., 844 F. Supp. 1533, 1534 (S.D. Fla. 1993), aff'd, 84 F.3d 438 (11th Cir. 1996) (citations omitted). The EEOC's investigatory function lies at the heart of the statutory scheme for remedying employment discrimination. Smith v. Sentry Ins., 674 F. Supp. 1459, 1467 (N.D. Ga. 1987). Consequently, "the actual investigation triggered by the EEOC charge [is] the primary factor determining the permissible scope of a judicial complaint of employment discrimination." Id. A judicial complaint may therefore include any allegations investigated by the EEOC, even if the investigation was broader than the EEOC charge triggering the investigation because the EFOC has had the opportunity to effect voluntary compliance with the law prior to the filing of a civil action. Id. See also Montgomery v. Atlanta Family Rest.. Inc., 752 F. Supp. 1575 (N.D. Ga. 1990)

(holding that claims in the plaintiff's complaint which were not specifically alleged in her EEOC charge but which were part of the EEOC's investigation reasonably related to the conduct alleged in the formal EEOC charge).

Applying the law to the facts of this case, Plaintiff has failed to exhaust her administrative remedies under Title VII with respect to her retaliation claim. Although Plaintiff represented in her Second Amended Complaint that she filed an amended charge of discrimination with the EEOC, (Second Amended Compl. ¶6), the record does not support Plaintiff's representation. What Plaintiff has characterized as an amended EEOC charge is a letter, dated May 2, 2002, that she prepared during the conciliation stage of the EEOC process, nearly two months after the EEOC issued a cause determination with respect to her original EEOC charge filed on June 22, 2001, and in response to the EEOC investigator's request to put together what Plaintiff felt would be a fair settlement. (See Second Amended Compl., Ex. B; Pl. Dep. pp. 205, 269-70, Ex. 18). In this letter, Plaintiff refers to her work situation worsening after she filed her original EEOC charge, based on Defendant Roberts refusing to speak to her and addressing work-related questions to her colleagues, Defendant Roberts staring at her, Mr. McLemore reassigning some of her duties to a co-worker to alleviate some of the verbal abuse from Defendant Roberts, a poor performance evaluation, not being compensated for acting as the Accounts Payable Supervisor, not receiving new software training, not being permitted to receive comp time, and overall being set up to fail. (See id.). The Court notes that Plaintiff has failed to respond to Defendant CAU's argument that she failed to exhaust her administrative remedies with respect to her retaliation claim, and thus cites no support for why her letter, written during and for the purpose of conciliation, constitutes an

amendment to her original charge of discrimination. There is no evidence that the EEOC investigated these new allegations of retaliation, and the EEOC' s right to sue letter only references Plaintiff's original EEOC charge. (See Second Amended Compl., Ex. D). Further, Plaintiffs retaliation claim could not be reasonably expected to grow out of a general allegation of gender harassment in her EEOC Charge. See Fitzgerald v. Henderson, 36 F. Supp. 2d 490, 500 (N.D.N.Y. 1998) (claim of retaliation did not reasonably grow out of claims of sexual discrimination and harassment) (citing Szarka v. Reynolds Metals Co., 17 F. Supp. 2d 115, 124 (N.D.N.Y. 1998); Carrasco v. New York City Off-Track Betting Corp., 858 F. Supp. 28, 33 (S.D.N.Y. 1994) (retaliation claim not reasonably related to charge of sexual discrimination), aff d, 50 F.3d 3 (2d Cir. 1995)). Accordingly, Plaintiffs retaliation claim is barred for failure to exhaust her administrative remedies.

2. Prima Fade Case

Defendant CAU argues that even if Plaintiffs retaliation is not barred by her failure to exhaust administrative remedies on that claim, she cannot make out a prima facie case of retaliation because she cannot show that she engaged in statutorily protected activity or that she suffered an adverse employment action.

Title VII provides that it is "an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment" because the employee has opposed unlawful discrimination by their employer or "has made a charge, testified, assisted, or participated in any' manner in an investigation, proceeding, or hearing" concerning unlawful discrimination by his employer. 42 U.S.C. § 2000e-3(a). In order to establish a prima facie case of retaliation, Plaintiff must show that (1) she engaged in protected activity; (2)

she suffered from an adverse employment action; and (3) the adverse employment action was caused by her engaging in protected activity. See 42 U.S.C. § 2000e-3(a); Brochu v. City of Riviera Beach, 304 F.3 d 1144, 1155 (11th Cir. 2002); Sullivan v. Nat'l R.R. Passenger Corp., 170 F.3d 1056, 1059 (11th Cir. 1999).

The opposition clause protects employees who have opposed an employment practice that has been made unlawful by Title VII. See EEOC v. Total Sys. Sews., Inc., 221 F.3d 1171, 1175 (11th Cir. 2000). Although the Plaintiff need not prove the underlying charge of discrimination or show that the conduct opposed was unlawful to show that she engaged in protected opposition to discrimination, she must show that she had a reasonable, good faith belief that the discrimination existed. See Clover v. Total Sys. Servs., Inc., 176 F.3d 1346, 1351 (11th Cir. 1999); Harper v. Blockbuster Entm't Corp., 139 F.3d 1385, 1388 (11th Cir. 1998) (citingLittle v. United Tech., 103 F. 3d 956, 960 (11th Cir. 1997)). The objective reasonableness of an employee's belief that her employer has engaged in an unlawful employment practice must be measured against substantive law. See id. at 1351; Little v. United Tech., 103 F.3d 956, 960 (11th Cir. 1997) (explaining that failure to charge an employee who opposes an employment practice with substantive knowledge of the law would eviscerate the objective component of the reasonableness inquiry). The EEOC Compliance Manual defines protected activity as that which "oppose[s] any practice made unlawful under the employment discrimination statutes." See U.S. EEOC Compliance Manual, 591 PLI/LiT 729, 738 (1998). These may include filing an EEOC charge, threatening to file an EEOC charge, complaining to anyone about alleged discrimination, refusing to obey an order because of a reasonable belief that it is discriminatory, and

requesting reasonable accommodation or religious accommodation. See id. at 738-39.

Applying the law to the facts of this case, the Court finds that Plaintiff has not made out a prima facie case for retaliation because she cannot show that she engaged in protected activity. Plaintiff's complaint letter to HR does not constitute protected activity because she did not specifically complain of gender discrimination. (See DSMF ¶¶ 16-18, 21-25; Pl. Dep. pp. 111-15, 122-24, Ex. 6). See Sajadian v. American Red Cross, 202 F.3d 260, 1999 WL 1111455, at *1 (4th Cir. 1999) (holding that plaintiff did not engage in protected activity because her complaint to the director of human resources only raised general concerns about her workload, hours, and denial of leave, and did not mention national origin discrimination); Galdieri-Ambrosini v. Nat'l Realty & Dev. Corp., 136 F.3d 276, 291-92 (7th Cir. 1998) (holding that plaintiff did not state in her complaints that the alleged discriminator's actions were based on her gender, and there was nothing that could have led the defendant to conclude that her complaints were based on gender discrimination); Gautney v. Amerigas Inc., 107 F. Supp. 2d 634, 646 (E.D. Pa. 2000) (holding that plaintiff's general complaints that she was treated differently did not support "inference that her supervisors knew she was complaining of gender or sex discrimination or that her vague complaints could reasonably lead to retaliatory animus."). Nor could Plaintiff's letter on its face be construed as a complaint of harassment based on or because of her gender. Indeed, Mr. Young dealt with Plaintiffs complaint through the employee Complaint Resolution Procedure rather than the channels for investigating claims of sexual harassment. (DSMI 26-27, Young Dep., Ex. 1, bates 000498-000502). Plaintiff merely asserts that her complaint to HR constituted her protected activity, and did not

respond to Defendant CAU's argument to the contrary. Accordingly, Plaintiffs HR complaint in March 2001 does not constitute protected activity. However, Plaintiff's EEOC charge filed on June 22, 2001, undisputably constitutes protected activity.

Although Plaintiff engaged in protected activity by filing her EEOC charge of discrimination on June 22, 2001, she cannot show that she suffered any adverse employment action. An adverse employment action is an ultimate employment decision, such as discharge or failure to hire, or other conduct that "alters the employee's compensation, terms, conditions, or privileges of employment, deprives him or her of employment opportunities, or adversely affects his or her status as an employee." Gupta v. Fla. Bd. of Regents, 212 F.3d 571, 587 (11th Cir. 2000). An employee does not have to be the victim of an ultimate employment decision such as a wrongful termination or a discriminatory promotion to be the victim of an adverse employment action. Wideman v. Wal-Mart Stores, Inc., 141 F.3d 1453, 1456 (11th Cir. 1998). The employment action, however must rise to a level of substantiality. Stavropoulos v. Firestone, 361 F.3d 610, 617 (11th Cir. 2004). Plaintiff must therefore show that a reasonable person would find that the action seriously and materially adversely changed the terms, conditions, and privileges of employment. Davis v. Town of Lake Park, 245 F.3d 1232, 1239 (11th Cir. 2001); Doe v. DeKalb County Sch. Dist., 145 F.3d 1441, 1453 (11th Cir. 1998). Not "every unkind act" amounts to an adverse employment action; an employment action that imposes some *de minim is* inconvenience or alteration of responsibilities does not rise to the level of substantiality necessary to constitute an adverse employment action. See Wu v. Thomas, 996 F.2d 271, 274 n.3 (11th Cir. 1993); Doe, 145 F.3d at 1453.

Applying the law to the facts of this case, Plaintiff

cannot show that she suffered an adverse employment action. First, staring at and/or not speaking to an employee are not adverse actions. See Raymond v. U.S. Capitol Police Bd., 157 F. Supp. 2d 50, 59 (D.D.C. 2001) ("co-worker ostracism does not constitute an adverse employment action"); see also Roberts v. Segal Co., 125 F. Supp. 2d 545, 549 (D.D.C. 2000) ("The fact that plaintiff believes she was getting the cold shoulder from her co-workers does not constitute a materially adverse consequence or disadvantage in the terms and conditions of her employment so as to establish an adverse personnel action."); Munday v. Waste Mgmt. of N.Am., Inc., 126 F.3d 239, 243 (4th Cir. 1997) (holding that harasser's conduct of yelling at the plaintiff during a meeting, directing other employees to ignore her and to spy on her, and generally refusing to communicate with her concerning her employment-related complaints, could not, as a matter of law, establish an adverse employment action for the purposes of stating a retaliation claim).

Second, with respect to Plaintiff's allegation that some of her supervisory duties were taken away from her, the record evidence shows that Plaintiff's role as liaison between the office operations (generating monthly reports) and Defendant Roberts, when Mr. McLemore was out of the office was *de minimis,* especially in light of the fact that Plaintiff was having conflicts with Defendant Roberts and complained about how he treated her. (See DSMF ¶¶ 95-96; Ogletree Dep. pp. 90, 146-47, 149-51, 165-66, 176-77). Ms. Ogletree testified that Plaintiff was relieved that she did not have to have as much contact with Defendant Roberts. (Ogletree Dep. pp. 91-92, 160-61). Further, there is no evidence that the removal of any duties that required Plaintiff to have additional contact with Defendant Roberts resulted in a loss of pay, change in

title, or a change in her shift, such that a reasonable fact-finder could conclude that there was a material change in her employment. See Burlington Indus., Inc. v. Ellerth, 524 U.S. 742, 761 (1998) ("A materially adverse change might be indicated by a termination of employment, a demotion evidenced by a decrease in wage or salary, a less distinguished title, a material loss of benefits, *significantly diminished material responsibilities,* or other indices that might be unique to a particular situation.") (quoting Crady v. Liberty Nat'l Bank & Trust Co. of Ind., 993 F.2d 132, 136 (7th Cir. 1993)) (emphasis added); Snoddy v. City of Nacogdoches, No. 03-41238, 98 Fed. App. 338, 342-43, 2004 WL 1161817, at *3 (5th Cir. May 25, 2004) (affirming district court's ruling that plaintiff could not show that his removal from a program was an adverse action because although he "was no longer required to perform additional training duties as a result of the department's decision, his primary job title, pay, hours, and benefits remained the same.").

Third, Plaintiff's allegations of not being permitted to work *extra* hours during a busy time of the year, and being required to fill out leave slip forms when reporting back to work from a doctor's appointment simply do not amount to a material change in her working conditions. Finally, with respect to Plaintiffs allegation that she was given a negative performance evaluation, the record does not objectively support Plaintiffs contention that her 2001 evaluation was "negative" simply because she was rated as meeting expectations in all but two categories. Even if this rating arguably was negative, it did not result in any economic injury to Plaintiff and, therefore, is not adverse. See Davis, 245 F.3d at 1240.

In sum, none of Plaintiffs allegations of retaliatory conduct, individually, or collectively, establish an adverse employment action. See Cantrell v. Jay R. Smith Mfg.

Co., 248 F. Supp. 2d 1126, 1137-39 (M.D. Ala. 2003) (holding that plaintiff could not establish an adverse action based on the following actions, individually or collectively: a change in her duties to include clerical work; plaintiff was assigned to report to a new supervisor; plaintiff was not adequately trained or provided with the tools for her Corel presentations; plaintiff did not receive certain software; she was treated adversely in matters relating to sick leave and she received a negative job performance evaluation). Accordingly, Defendant CAU's Motion fo Summary Judgment on Plaintiff's retaliation claim should be GRANTED.

D. Plaintiff's State Law Claims

1. Intentional Infliction of Emotional Distress

Plaintiff alleges that she suffered emotional distress as a result of Defendant Roberts' gender harassment. Defendant Roberts argues, however, that Plaintiff cannot make out a prima facie case of intentional infliction of emotional distress because she cannot show that his alleged conduct was intentional or reckless, that his alleged conduct was extreme and outrageous, that there is a causal connection between any stress suffered by Plaintiff and Defendant Roberts' alleged conduct, and Plaintiff's emotional distress was not sufficiently severe to be actionable under Georgia law.

In order to state a claim for intentional infliction of emotional distress under Georgia law, the plaintiff must show that (1) the conduct was intentional or reckless; (2) the conduct was extreme and outrageous; (3) there is a causal connection between the conduct and the emotional distress; and (4) that the emotional distress is severe. Gaston v. S. Bell Tel. & Tel. Co., 674 F. Supp. 347, 352 (N.D. Ga. 1987). Whether a claim rises to the requisite level of extremeness and outrageousness is a question of law. Yarbray v. S. Bell Tel. & Tel. Co., 409 S.E.2d

835, 838 (Ga. Ct. App. 1991) (citing Gordon v. Frost, 388 S.E.2d 362 (1989)). A claim for intentional infliction of emotional distress requires more than an allegation that plaintiff was offended or insulted. Kornegay v. Mundy, 379 S.E.2d 14, 16 (Ga. Ct. App. 1989). In fact, the burden on plaintiff is "a stringent one." Ingram v. JIK Realty Co., 404 S.E.2d 802 (Ga. Ct. App. 1991), cert. denied, 199 Ga. App. 906. The conduct must "go beyond all possible bounds of decency, [so as to be] regarded as atrocious, and utterly intolerable in a civilized community." Norfolk S. Ry. Co. v. Spence, 435 S.E.2d 680, 681 (Ga. Ct. App. 1993).

Factors to consider include the existence of a relationship in which one person has control over another; the actor's awareness of the victim's particular susceptibility; and the severity of the resultant harm. Trimble v. Circuit City Stores, Inc., 469 S.E.2d 776, 778 (Ga. Ct. App. 1996). The existence of a special relationship between the actor and victim, such as that of employer to employee, *may*, under certain circumstances, make otherwise non-egregious conduct outrageous because the very nature of the employee-employer relationship provides a captive victim who may fear reprisal for complaining, so that the injury is exacerbated by repetition, and it presents a hierarchy of structured relationships that cannot easily be avoided. Id.; Bridges v. Winn-Dixie Atlanta, Inc., 335 S.E.2d 445, 499 (Ga. Ct. App. 1985). Nonetheless, while the existence of a relationship in which one person has control over another, such as the employer-employee relationship, may contribute to the outrageousness of the situation, it is not dispositive. Miraliakbari v. Pennicooke, 561 S.E.2d 483, 487 (Ga. Ct. App. 2002) (citing Troncalli v. Jones, 514 S.E.2d 478 (Ga. Ct. App. 1999)). Indeed, the standard for intentional infliction of emotional distress

claim remains very high, and though "comments made within the context of one's employment may be horrifying or traumatizing, [they] are generally considered a common vicissitude of ordinary life." Hodor v. GTE Mobilnet, Inc., 535 S.E.2d 300, 302 (Ga. Ct. App. 2000) (citations omitted). See, Somers v. Delta Air Lines, No. 1:95-CV-652-ODE, 1996 WL 741379, *4 (N.D. Ga. Sept. 4, 1996) (granting defendant's motion for summary judgment on plaintiffs intentional infliction of emotional distress claim based on ADA claim where supervisor allegedly teased plaintiff about his illness and told plaintiff's co-workers that plaintiff was trying to con defendant); Fox v. Ravinia Club, 414 S.E.2d 243 (Ga. Ct. App. 1991) (defendant's conduct in speaking to the plaintiff in a hostile, intimidating, and abusive manner; giving false reasons for plaintiff's termination, and laughing at and taunting the plaintiff was insufficient to state a claim for intentional infliction of emotional distress).

In order for a plaintiff to meet the requisite level of outrageousness and egregiousness, "the conduct must be of such serious import as to *naturally* give rise to such intense feelings of humiliation, embarrassment, fright or extreme outrage as to cause *severe* emotional distress." Moses v. Prudential Ins. Co. of Am., 369 S.E.2d 541, 543 (Ga. Ct. App. 1988) (emphasis added) (citing Bridges, 335 S.E.2d 445); Thomas v. Ronald A. Edwards Constr. Co., 293 S.E.2d 383 (Ga. Ct. App. 1982)). In addition, the *severity* of the mental distress is a factor that the court must consider in determining a defendant's liability because "liability clearly does not extend to mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities." RESTATEMENT (SECOND) OF TORTS §46 cmt. d (1965); see also Bridges, 335 S.E.2d 445.

Applying the law to the facts of this case and

construing the evidence in the light most favorable to Plaintiff, the evidence is insufficient to meet the requisite level of egregiousness or outrageousness in order to support a claim for the intentional infliction of emotional distress. Plaintiffs allegations that Defendant Roberts spoke to her harshly, in a loud voice, nitpicked, told her that if she could not do something then maybe someone else needed to do her job, yelling at her about going over his head with regard to a client complaint and the issue of her sick leave, among other things, are not so outrageous as to *naturally* give rise to such intense feelings of humiliation, embarrassment, fright or extreme outrage and be considered "atrocious, and utterly intolerable in a civilized community." Turnbull v. Northside Hosp., Inc., 470 S.E. 2d 464, 466 (Ga. Ct. App.) (quoting Yarbrough v. SAS Sys., 419 S.E.2d 507, cert. denied, (Ga. 1992), cert. denied, (Ga. 1996); Moses, 369 S.E.2d at 543 (citing Bridges, 335 S.E.2d 445). "[W]hile [Defendant Roberts'] conduct may be viewed as harsh and insensitive, the supervisor's responsibilities to oversee the workplace and the employee's obligations to perform her duties do not make such conduct so extreme as to go beyond all reasonable bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community." Miraliakbari, 561 S.E. 2d at 486-88 (holding that plaintiff could not a state claim for intentional infliction of emotional distress where her supervisor told her that she would be fired if she left work to go care for her injured six-year-old child because this conduct, "while certainly rude. . do[es] not rise to the level of outrageousness necessary to support a claim of intentional infliction of emotional distress"); See also Ms. v. Republic Indus. Inc., 260 F. Supp. 2d 1229, 1256 (N.D. Ga. 2003) (granting defendant's motion for summary judgment on plaintiff's intentional infliction of

emotional distress claim where alleged harasser exposed his sexual organs to plaintiff, in light of the fact that Plaintiff herself engaged in sexual jokes and banter in the workplace), aff d, 88 Fed. App. 390, 2003 WL 22994226 (11th Cir. Dec. 12, 2003). In contrast, cases in which plaintiffs have alleged much more serious conduct, such as sexual harassment coupled with sexual assault, have stated a claim for intentional infliction of emotional distress sufficient to withstand summary judgment. See, e.g., Morgan v. Fellini's Pizza Inc., 64 F. Supp 2d. 1304 (ND. Ga. 1999) (denying defendant's motion for summary judgment on plaintiff's intentional infliction of emotional distress claim based on sexual harassment *and sexual assault);* Coleman v. Hous. Auth. of Americus, 381 S.E.2d 303 (Ga. Ct. App. 1989) (holding that plaintiff's allegations of harassment were sufficient to withstand summary judgment where she alleged, *inter alia,* that her supervisor .would call her into his office on business and then turn the conversation to personal matters involving sex, try to talk about masturbation and the sexual practices of black women, showed her sexual cartoons and asked her if she and her husband have tried the act depicted in the cartoon, offered her a pornographic video and offered to exchange such videos, told her sexual and racist jokes, told her things like the way she wore a dress "made him crawl all over," and inquired "if she knew what her walk did to him."). In the case presently before the Court, the alleged harassing conduct simply does not rise to the level of outrageousness as described in the above-cited cases. Plaintiff likewise has not presented evidence that she suffered *severe* emotional distress. Although Plaintiff contends that Defendant Roberts' alleged conduct caused her stress and thereby exacerbated her pre-existing medical condition of Lupus, Plaintiff did not provide expert medical testimony to that effect. Further, Plaintiff never indicated to

Defendant Roberts that his alleged verbal harassment was causing her any medical complications. (DSMF ¶ 109; Pl. Dep. pp. 315-16). See Gaston, 674 F. Supp. at 353 (finding that plaintiffs evidence of severity of emotional distress was, at best, "merely colorable" because although she argued that she had seen doctor for headaches, exhaustion and high blood pressure, her doctors suggested that her conditions were typical of either menopause or hereditary tendencies.); Bridges v. Winn-Dixie Atlanta, Inc., 335 S.E.2d 445, 448 (Ga. Ct. App. 1985) (holding that plaintiff could not state a claim for intentional infliction of emotional distress because "the symptoms of which she complains are those commonly associated with multiple sclerosis; she acknowledges that she did not consult her physician immediately after the incidents complained of and therefore did not establish the requisite causal connection; and the duration of the allegedly distressful incidents was relatively brief"). Accordingly, Defendants' Motion for Summary Judgment should be GRANTED as to Plaintiffs claim for intentional infliction of emotional distress.

2. Negligent Retention and Hiring

Plaintiff contends that Defendants are liable for negligently hiring and retaining Defendant Roberts because Defendant CAU knew or should have known about Defendant Roberts' propensity to harass female employees because some employees complained about Defendant Roberts' when he was an independent contractor working as an auditor for Defendant CAU prior to his hire in 1998.

In order to sustain a claim for negligent retention, a plaintiff must show that the employer knew or should have known of the employee's propensity to engage in the conduct which caused his injury, by proffering evidence that is substantially related to the injury-causing conduct.

Herrin Bus. Prod., Inc. v. Ergk, 563 S.E.2d 442, 446 (Ga. Ct. App. 2002) (citing Tecumseh Prod. Co. v. Rigdon, 552 S.E.2d 910, 912 (Ga. Ct. App. 2001)). Therefore, in a workplace harassment case, a plaintiff must show that the employer knew or should have known, in the exercise of reasonable care, of an employee's reputation for harassment, that it was foreseeable that the employee would harass other employees, and nevertheless hired or retained the harassing employee. Coleman, 381 S.E.2d at 307; Cox v. Brazo, 303 S.E.2d 71, 73 (Ga. Ct. App.), aff d, 307 S.E.2d 474 (1983). The Court should consider "whether the employer promulgated an express policy discouraging unlawful discrimination, provided a mechanism by which employees could complain, and promptly responded to the complaints." Coleman, 381 S.E.2d at 307. Further, "if an ordinarily careful employer acting upon the information furnished could have reasonably discovered that its supervisor was inflicting emotional distress upon its employee, the employer could be found to have negligently retained the supervisor." Id. Thus, a negligent retention claim is essentially a derivative claim of an intentional infliction of emotional distress claim. See Phinazee v. Interstate Nationalease, Inc., 514 S.E.2d 843, 846 (Ga. Ct. App. 1999) (citing Coleman, 381 S.E.2d at 307).

Applying the law to the facts of this case, Plaintiff cannot sustain a claim for the negligent retention of Defendant Roberts. Having already determined that Plaintiff cannot state a claim for the intentional infliction of emotional distress because Plaintiff failed to show an injury—severe emotional distress— Plaintiff's derivative negligent retention claim must also fail. See Phinazee, 514 S.E.2d at 846. That notwithstanding, Plaintiff has not presented sufficient evidence that Defendant CAU had previously been put on notice of Defendant Roberts'

tendency to harass female employees on the basis of their gender. Although Plaintiff argues that Defendant CAU was aware of some complaints about Defendant Roberts when he was an external auditor for the university and prior to being hired by the university, Plaintiff has not proffered evidence that Defendant CAU was aware that Defendant Roberts had a propensity to specifically harass female employees because of their gender. Rather, Plaintiff's evidence shows that prior to and after Defendant Roberts' hire, Defendant CAU received complaints or was aware of Defendant Roberts' abrasive personality and management toward male and female employees. Specifically, Mr. Poitier testified that prior to Defendant Roberts' hire, he told his boss, Dr. Charles Teamer, that his experience in working with Defendant Roberts has "always been somewhat negative in the sense that where [sic] we go, he creates this kind of rift. . . .You don't need that divisiveness in this office. It's going to be too divisive. It's going to create problems." (Poitier Dep. pp. 22-23). Mr. Poitier testified that he was against Defendant Roberts being hired, and his opinion was based, in part, on comments from his employees, such as Patrick Thomas, who expressed to Mr. Poitier that he could not work with Defendant Roberts, and that he would quit if Defendant Roberts was hired. (Poitier Dep. pp. 23-24). Mr. Poitier also testified that his secretary at the time, Latonya Franklin, had complained to him that Defendant Roberts had spoken to her in a disrespectful way, and when he brought the issue to Defendant Roberts' attention, Defendant Roberts' stated, "That damn girl doesn't know what she['s] talking about." (Poitier Dep. pp. 14-17).

Similarly, James Clausell, an owner of a business that contracted independent federal auditors and had worked with Defendant Roberts for several years, informed Dr. Teamer that he did not believe that Defendant Roberts

was a good match for Defendant CAU. (Clausell Dep. pp. 6-7, 23-25). Mr. Clausell based his opinion on the fact that while Defendant Roberts was an external auditor for the university, Mr. Clausell received complaints from two CAU employees, Ms. Pressley and Mr. Singh, that Defendant Roberts was very abrasive, disagreeable, aggressive and impatient, and that Defendant Roberts would have to supervise these individuals if hired by Defendant CAU. (See Clausell Dep. pp. 10-25). In addition, Mr. Clausell testified that he was aware that Defendant Roberts had a "reputation. . .not only with females but males as well about the way he's very abrasive, very aggressive kind of person, manager." (Clausell Dep. p. 12). Mr. Clausell also remarked that Defendant Roberts "had very little patience with people he thought in his mind were incompetent," that "[i]f he thought you couldn't do the job, he didn't have much use for you," and, in that regard, "it didn't matter if you were a man or a woman ." (Clausell Dep. pp. 26-27). Mr. Clausell expressly stated that his opinion on why he did not believe Defendant Roberts would be "a good match for the university" was not based on any belief that Defendant Roberts would discriminate against women. (Clausell Dep. pp. 27-28).

Neither Mr. Poitier's nor Mr. Clausell's testimony indicates that Defendant CAU was aware that prior to hiring Defendant Roberts, he verbally harassed women because of their gender. Rather, their testimony shows that Defendant Roberts was abrasive with both male and female employees, and thus it was not foreseeable that Defendant Roberts would discriminate or harass female employees because of their gender after being hired by Defendant CAU. Likewise, Plaintiff has not proffered evidence that after Defendant Roberts was hired, Defendant CAU knew of but ignored Defendant Roberts' propensity to verbally harass female employees on the basis of their gender.

As previously discussed, Plaintiff's own complaint to HR related to Defendant Roberts' abrasive personality and management style, and did not expressly state that she felt she was being treated differently or harassed because she was female. Consequently, Plaintiff has not shown that Defendant CAU knew or should have known of Defendant Roberts' propensity for verbally harassing female employees, or specifically Plaintiff, on the basis of her gender, and negligently hired and retained him. Accordingly, CAU's Motion for Summary Judgment should be GRANTED as to Plaintiff's claim for negligent retention.

CONCLUSION

For the foregoing reasons, IT IS RECOMMENDED that Defendants' Motions for Summary Judgment be GRANTED. Docket Entries [44 and 45]. As this a is a final Report and Recommendation, the clerk is DIRECTED to terminate the reference to the undersigned.

SO REPORTED AND RECOMMENDED, this 3rd day of FEBRUARY, 2005.

s/Linda T. Walker
LINDA T. WALKER
UNITED STATES MAGISTRATE JUDGE
IN THE UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

EULICE M. HOLLIMAN,
Plaintiff,

v.

CLARK ATLANTA UNIVERSITY, INC., et al.,
Defendants.

CIVIL ACTION NO.
1:03-CV-0132-JEC

ORDER

This Title VII case has been assigned to this Court. Plaintiff alleges sexual harassment, contending that her supervisor allegedly interacted with her in a "demeaning" and "belittling" manner and "talked to Plaintiff in a harsh, militaristic, and demeaning tone...." (First Amended Complaint [4]11 15-17). Presently there are several motions pending before the Court, including motions by the defendants for summary judgment.

Title VII cases are routinely referred to a magistrate judge, pursuant to Internal Operating Procedure No. 920-2(a), NDGa. This case was not so referred by the Clerk, however, presumably because, in her original complaint [1], the plaintiff indicated that she was filing the action as a class action. *Id.* at 1 9-10. Internal Operating Procedure Rule 920-2(a) provides that class actions shall not be referred to the magistrate judge pursuant to that rule.

In her Amended Complaint, however, paragraphs 9-10 no longer seek class action treatment. Moreover, even if paragraphs seeking class status are located anywhere else in the Amended Complaint---and the Court has not discovered any such paragraphs in its quick scan of the. Amended Complaint--plaintiff has not properly

asserted a class action as she has failed to file a motion to certify class within ninety days after filing the complaint. *See* LR 23.1B, NDGa. Hence, this case is not a class action.[1]

Therefore, the Court directs the Clerk to refer this case to a magistrate judge to resolve the pending motions.

SO ORDERED, this 18th day of October, 2004.

s/Julie E. Carnes
UNITED STATES DISTRICT JUDGE

[1] Even had plaintiff sought class treatment, such would have been denied in this case. This case appears to involve nothing more than a hostile environment claim by plaintiff based on her negative interactions with her supervisor. Such fact-specific claims are not typically amenable to class treatment.

II. OTHER ESSENTIAL MATERIAL

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

EULICE M. HOLLIMAN,	:	
Plaintiff	:	CIVIL ACTION
vs.	:	NO. 1:03-CV- 0132-JEC
CLARK ATLANTA	:	
UNIVERSITY, INC., et al.	:	
Defendants	:	

PLAINTIFF'S RESPONSE TO DEFENDANT CLARK ATLANTA UNIVERSITY, INC.'S STATEMENT OF MATERIAL FACTS AS TO WHICH THERE IS NO GENUINE ISSUE TO BE TRIED

Plaintiff Eulice M. Holliman ("Holliman" or "Plaintiff") by counsel, and pursuant to Fed.R.Civ.P. 56 and L. R. 56.1(B)(2), submits this Response to Defendant's Statement of Material Facts as to Which There is no Genuine Issue to be Tried. Because these facts, under the applicable law discussed in Plaintiff's supporting memorandum, demonstrate that there are genuine issues of material facts for a fact finder to decide, Defendant Clark Atlanta University, Inc. is not entitled to a summary judgment as a matter of law.

Defendant's Material Fact 1: Plaintiff began working for CAU on July 19, 1991, as a temporary employee in the Accounts Payable department, and she became a full-time employee (i.e., an Accounts Payable Clerk) on or about August 19, 1991.(Holliman Dep. p. 32).

Plaintiff admits 1

Defendant's Material Fact 2: Richard McLemore ("McLemore") became the Accounts Payable Manager, and

Plaintiff's immediate supervisor, in February 1998. (McLemore Dep. pp. 13-14; Holliman Dep. p. 75).

Plaintiff admits 2

Defendant's Material Fact 3: Plaintiff began serving as McLemore's lead person when he became the Accounts Payable Manager in February 1998, because she had been there the longest and had the most knowledge of how the Accounts Payable department operated within the overall organization (i.e., CAU). (McLemore Dep., pp. 19-20).

Plaintiff disputes 3: Plaintiff disputes the implication that Plaintiff began serving as a "lead person," when, to the contrary, she was serving in a supervisory capacity. McLemore testified that while he was working the fraudulent activities investigation, he basically put the accounts payable department in Holliman's hands "to run the operation of the accounts payable department." (McLemore's Dep. 19, L16). McLemore testified Holliman was managing things after he came to the Accounts Payable department. (McLemore's Dep. 32, L14-p33, L15).

Defendant's Material Fact 4: Basically, Plaintiff was responsible for directing all of the work that came through the department. (McLemore Dep., p. 23).

Plaintiff admits 4: except that Plaintiff also performed supervisory task over other employees. (McLemore's Dep. 19, L16; p. 32, L14-p33, L15).

Defendant's Material Fact 5: Plaintiff eventually assumed the title Accounts Payable Supervisor. (Holliman Dep., p. 234).

Plaintiff disputes 5: The evidence shows Plaintiff was performing the Accounts Payable supervisor's position for about a school year before McLemore voiced his recommendation that she be promoted to the position. (McLemore's Dep. 32, L25-p33, L15). McLemore gave Holliman that responsibility when he first arrived to the

Accounts Payable department, (McLemore's Dep. P. 10, L24-p. 11, L1; p. 19, L16).

Defendant;s Material Fact 6: Roberts was initially hired by CAU in January 1998, to assist the University in resolving some issues relating to the administration of its student financial aid programs. (Roberts Dep., pp. 34-36).

Plaintiff admits 6.

Defendant's Material Fact 7: Prior to his hiring by CAU in January 1998, Roberts had performed auditing services for the University for several years as external auditor with Clausell & Associates. (Roberts Dep., p. 34)

Plaintiff admits 7.

Defendant's Material Fact 8: In or about July 1998, Roberts became the Assistant Vice President of Finance and Administration and Comptroller for CAU ("AVP/Comptroller").(Roberts Depo., pp. 60, 74).

Plaintiff admits 8.

Defendant's Material Fact 9: In that position, Roberts had managerial responsibility over several accounting departments, including Accounts Payable, the department in which Plaintiff. worked. (Roberts Dep., p. 74).

Plaintiff admits 9.

Defendant's Material Fact 10: McLemore reported to Roberts. (McLemore Dep., p. 27;. Young Dep., p. 12).

Plaintiff admits 10.

Defendant's Material Fact 11: Roberts also had managerial responsibility for General Accounting, Payroll, and Cash Management and Investment. (Id.)

Plaintiff admits 11.

Defendant's Material Fact 12: Bobby Young became the University's Vice President for Finance in October 2000.(Young Dep., p. 8)

Plaintiff admits 12.

Defendant's Material Fact 13: Roberts then reported to Young. (Young Dep., p. 11).

Plaintiff admits 13.

Defendant's Material Fact 13 (sic): According to Plaintiff, beginning in or about December 2000, Roberts began to demonstrate a pattern of abuse towards her. (Holliman Dep., pp. 37-38).

Plaintiff disputes 13: Plaintiff recalls a month after Roberts was in his new position as Assst. V.P. of Finance/Comptroller, Roberts spoke to her in "a harsh and demeaning tone, thrusting his head from side to side with a look of disgust on his face, slowly speaking to me as if he was acting like a crazy man." (Plaintiff's Aff., ¶ 15).

Defendant's Material Fact 15: Plaintiff contends that Roberts routinely spoke to her in a "harsh, militaristic and demeaning tone," and interacted with her in a "disdainful and disparaging manner." (Complaint ¶9[18-19).

Plaintiff admits 15.

Defendant Material Fact 16: By typewritten statement dated March 15, 2001, Plaintiff formally complained CAU 's Human Resources department about "the manner [in which] Mr. Roberts chooses to speak to the staff." (Holliman Dep., pp. 110-111; Holliman Dep., Exh. 6).

Plaintiff disputes 16: Plaintiff disputes the implication in ¶ 16 that Plaintiff invoked CAU's formal Complaint Resolution Procedure by submitting a typewritten statement to CAU's Human Resources department, when, to the contrary, the evidence shows Plaintiff invoked CAU's formal Complaint Resolution Procedure by following Step One of CAU's Complaint Resolution Procedure that required her to discuss her problems with her supervisor, McLemore. See Section 5.7 entitled "Complaint Resolution Procedure" ("CRP") Plaintiff's Exhibit 1 to Young's Dep., Bates Number CAU 000502. Holliman complained repeatedly to McLemore. (McLemore's Dep., p. 56, L19-22). Plaintiff invoked Step

two of the CRP by complaining to Bobby Young, the department head. Young admitted that he is the department head and Young admitted that Step 2 requiring employee to take unresolved problem to department head in Holliman's case meant him and Holliman complied with policy. (Young's Dep., P.129, L15-23). The CRP policy does not require the employee to invoke the CRP policy through the Human Resources department ("HR") at all. In the present case, Young referred Plaintiff to HR. (Holliman's Dep., P.112, L15-p. 113, L3)and (Young's Dep., P. 23, L19-23; p. 25, L4-8).

Defendant's Material Fact 17: In her HR complaint, Plaintiff claimed that Roberts "never allows you to finish a sentence before cutting in and attempting to make you [feel] inferior and stupid." (Holliman Dep., Exh. 6).

Plaintiff admits 17.

Defendant Material Fact 18: She also stated that "Mr. Roberts seems to enjoy his military tactics." (Id.)

Plaintiff admits 18.

Defendant"s Material Fact 19: According to Plaintiff, Roberts spoke to her using "harsh" and "military" tones which was "very embarrassing in front of [her] co-workers." (Id.)

Plaintiff admits 19.

Defendant's Material Fact 20: Plaintiff further contended that "[t]his is the way Mr. Roberts talks to all the staff and he does not care whom he attacks you in front of. (Id.)

Plaintiff admits 20.

Defendant's Material Fact 21: Plaintiff complained that she "and other staff members" find themselves "walking on eggshells all the time," and that "[t]his has created an unbearable work environment for others and myself." (Id.)

Plaintiff admits 21.

Defendant's Material Fact 22: Plaintiff also stated that, on several occasions during discussions with Roberts, she had "observed" the smell of alcohol on his breath. (Id.)

Plaintiff admits 22.

Defendant's Material Fact 23: Plaintiff questioned whether "this is also contributing factor to his behavior." (Id.)

Plaintiff admits 23.

Defendant's Material Fact 24: Plaintiff concluded her typewritten statement by stating: "I hope that this matter will be resolved and myself and the rest of the staff can get back to the business of the University." (Id.)

Plaintiff admits 24.

Defendant's Material Fact 25: Plaintiff met with CAU HR representative Tanya Shockley on March 15, 2001, discuss her internal HR complaint. (Holliman Dep., p. 111)

Plaintiff admits 25.

Defendant's Material Fact 26: Because Plaintiff's internal complaint did not raise issues of unlawful discrimination or harassment (i.e., which would have triggered an investigation under CAU's "Sexual Harassment Policy"), but instead focused on Roberts' alleged abusive "militaristic management style, the matter was designated for treatment under the University's "Complaint Resolution Procedure" (i.e., the complaint resolution mechanism used for addressing grievances other than those based on unlawful discrimination or harassment). (Young Dep., pp. 127128).

Plaintiff disputes 26:

CAU's Sexual Harassment Policy provides, "the University is committed to maintaining an educational and working environment free of conduct which degrades or subjugates employees or students. This policy applies equally to faculty, administrative and support staff and

students." See Plaintiff's Exhibit 1 to Young's deposition, Section 1.2 entitled "Sexual Harassment Policy" at Bates Number CAU 000442. Plaintiff states in her internal complaint dated March 15, 2001 that she was complaining about Roberts treating her in a very condescending manner: "He never allows you to finish a sentence before cutting in and attempting to make you fell (sic) inferior and stupid." When the evidence is viewed in the light most favorable to Plaintiff, it is revealed that Plaintiff is complaining about Roberts' conduct because she feels it is degrading. The term "degrade" is defined "c: to lower to an inferior or less effective level." See Merriam-Webster's Collegiate Dictionary, Tenth Edition (1998). Roberts' conduct was making Plaintiff feel inferior and stupid, the type of conduct CAU's Sexual Harassment Policy expressly prohibits. Plaintiff complied with Section 1.2.1 entitled "Procedure for Complaint" of CAU's Sexual Harassment Policy, that provides, "Any employee who feels that he or she has been the victim of sexual harassment should contact the Director of Human Resources within fifteen (15) working days of the incident. This report can be oral or written, but a written and signed statement of the complaint must be submitted by the complaining employee within three (3) working days of the initial report before an investigation can proceed." See Plaintiff's Exhibit 1 to Young's deposition, Section 1.2.1 entitled "Sexual Harassment Policy" at Bates Number CAU 000443. The last incident before Plaintiff filed her internal complaint occurred on March 1, 2001. See Defendant's Exhibit 6 to Holliman's Dep., Bates Number EEOC FOIA-0044. Computing in accordance to the policy, Plaintiff had until March 22, 2001, 15 working days later, to file her complaint. *(Id.)* Plaintiff made an oral report to HR on March 14, 2001, after she left meeting with Young, (Holliman's Dep. P. 112, L112-p. 113, L3), and subsequently submitted her written

and signed statement of the complaint on the next day March 15, 2001. (Holliman's Dep. P. 113, L4-11). Young admitted that when Holliman came to his office about her interactions with Roberts, she was talking about negative interactions and he viewed what Holliman said to him as a "complaint about Mr. Roberts." (Young's Dep., p. 22, L3-7). Young further admitted that the major thrust of Holliman's complaint was "That Mr. Roberts' conduct was unprofessional and demeaning and militaristic." *(ID. at p. 23, L5-8).* Young admitted that Step of the CRP requiring employee to take unresolved problem to department head in Holliman's case meant him and Holliman complied with policy. (Young's Dep. P. 129, L15-23). Young further admitted that he advised Holliman and HR that he had a discussion with Roberts and for that reason the grievance process never progressed to Step Three of the CRP requesting further investigation of the problem, (Young's Dep. P. 133, L7-11), and Young admitted Holliman's grievance process stopped at Step Two, (*ID.* at p. 134, L20-p. 135, L4), and Young admitted he considered the matter of Holliman's complaint closed after he counseled Roberts, (*ID.* at p. 135, L17-22). Young admitted that he had received a complaint about Roberts' conduct from another female employee about two or three months after he first became employed at CAU in October 2000, *(ID. at p. 25, L12-p. 26, L6),* and that the nature of this complaint was "About how he talked, how he talked was demeaning and harsh" from Melba Carmichael, a direct report to Roberts *(ID. at p. 26, L7-24).* Young admitted he received a complaint from T. J. Singh, a male employee working in the General Accounting Department and a direct report to Karen Sutton, wherein Singh complained that "Mr. Roberts was harsh, talked to him in a very unprofessional, demeaning manner" . . . "Made him feel little". *(ID. at p. 30, L3).* Marietta Blalock testified that in her location at the

front desk she observed interactions between Roberts and Singh and observed "Mr. Singh wouldn't fight back. . . . He [Roberts] was just belligerent as he was, you know. . . . but Mr. Singh was the type of man that wouldn't fight back," and Roberts did not yell at Singh: "It's no need to yell when you talk to somebody like that" because Roberts would just talk over him. (Blalock's Dep., p. 23, L2-25). T. J. Singh testified that he didn't think Roberts' conduct was based on Singh being from India, but Singh also said, "That never – I don't remember, to be honest with you, . . . As far I'm concerned, I don't think, he based that decision on that, that I'm Indian or whatever." (Singh's Dep., p. 48, L3-p. 49, L11). Singh was not aware of Roberts said behind his back: "He used to say that T. J. was dumb and – there was another person in grants and contracts, and he left. . . .it was Saba's husband, and I can't remember his name. But I know the last name was Tesfamariam or something like that, (Carmichael's Dep. 91, L19-24), and Roberts said about Singh: "He would just say certain things, you know, just in speaking, in conversation, like those people or those type of people do this or they don't do that or they don't believe in this or they believe in that or they don't observe certain things the way we do or they run their houses – they-re over their women and they tell the women what to do and the women do it and don't say anything" and similar comments about Saba's husband. (Carmichael's Dep. 92, L23-p.93, L11). Young admitted he investigated Plaintiff's internal complaint by only talking to and counseling Roberts. (Young's Dep., p. 130, L6-22). When the evidence is viewed in the light most favorable to Plaintiff, it is revealed Plaintiff properly invoked CAU's Sexual Harassment Policy, that HR failed to carry out its duty to launch an investigation, even if Young mistakenly thought Plaintiff only invoked Section 5.7 CAU's Complaint Resolution Procedure, Young failed to conduct an

investigation outside of talking to the alleged harasser Roberts himself and Young was quick to shut down the grievance process, Young had prior notice of Roberts' propensity to degrade and demean female employees from Carmichael's earlier in time complaint before Holliman's, and Young failed in his responsibility under CAU's Sexual Harassment Policy, CAU 000443, to create "an atmosphere free of discrimination and harassment, sexual or otherwise." By Defendant's own admission in its ¶ 26, CAU did not investigate Holliman's complaint under its Sexual Harassment Policy.

Defendant's Material 27: Consequently, the matter was forwarded to Roberts' immediate supervisor, Bobby Young, CAU's Vice President for Finance and Administration, for resolution. (Young Dep., 130).

Plaintiff disputes 27: Plaintiff incorporates herein her response to Defendant's Material Fact 26 above in its entirety.

Defendant's Material Fact 28: Young met with Roberts to show him Plaintiff's typewritten internal complaint and request that Roberts provide a formal written response thereto. (Young Dep., p, 130; Roberts Dep., pp. 138-140).

Plaintiff admits ¶ 28.

Defendant" Material Fact 29: Roberts promptly responded by letter dated March 27, 2001.(Young Dep., p. 164; Young Dep., Exh. 3).

Plaintiff admits 29: only to extent Roberts provided a response.

Defendant's Material Fact 30: Roberts referred to the language used in' Plaintiff's internal complaint as "inflammatory" and stated that "this was a routine matter and an integral part of her duties." (Young Dep., Exh. 3).

Plaintiff disputes 30: Roberts viewed Holliman's internal complaint narrowly to encompass one single

question. (Young Dep., Exh. 3). Holliman states in her complaint "During these years, I have never been talked to, in the manner Mr. Roberts chooses to speak to the staff." (Holliman Dep., Exh. 6). There is extensive evidence supporting Holliman's internal complaint:

(a) Joyce Stafford observed Roberts' interaction with the CAU staff during period of time Roberts was an external auditor:

> ". . .oftentimes, I was relaying information to Mr. Roberts from other staff persons. There were complaints sometimes that he talked harshly to females, or he talked down to them like they were beneath him. So oftentimes, I came in to kind of relay information to him rather than those persons having to go to him directly."

(Stafford's Dep., p. 7,L25-p. 8, L9). Stafford also had contact with Roberts at her new job at the Morehouse School of Medicine, working for Eli Phillips, a vice president. Two female staff members told Stafford why they wanted to meet with Phillips:

> "they said that they refused to work with him [Roberts] any longer because of his demeaning attitude, the way that he talked with them. He treated them like they were brainless. They were both accountants, and he treated them like they lacked skills and did not know their jobs. And at that point, they went in to meet with Mr. Phillips to ask that he be removed from the job. . . . Mr. Phillips called Mr. Clausell and made the request, and he was removed from the job."

(Stafford's Dep., p. 10,L24-p. 11,L18).

(b) Terryl Obasanya worked for CAU about six to seven years prior to working for the Morehouse School of Medicine. (Obasanya's Dep., p. 6,L10-24). Obasanya recalls how Roberts communicated with her: "He just more

or less talked to me like I didn't know what I was doing. . . . So after a while, it became such a problem that we had to let him go early from the project because it was just too much confusion." (Obasanya's Dep., p. 10,L25-p. 11,L11). Obasanya recalls how she felt: "Just upset because I knew my job. I just felt like he thought I didn't know what I needed to help get the job done." (Obasanya's Dep., p. 11,L16-21). Obasanya recalls telling the vice president at Morehouse

> "that we needed to let him go because we couldn't get anything done with him arguing so much. . . . since he was working for me and he was my consultant, I didn't feel the arguments were warranted because I felt if I'm – if I'm supplying the job, then you should do as I ask you to do."

(Obasanya's Dep., p. 12,L6-20).

(c) Toyah Ellis came in contact with Roberts every year at audit time and recalls her interactions with him were constant conflicts. (Ellis's Dep., p. 11,L5-p. 12,L11). Ellis recalls when Roberts' attitude towards her became less than professional:

> "Mr. Roberts' demeanor is aggressive and abrupt anyway, and he would be very condescending as if, . . . he would talk to you as if . . . you guys really don't know what you're doing. You really . . . aren't equipped to do the job. He would have real, real bad confrontations with Pam Pressley, and I worked for her. So there was always an occasion where I would be in the room, and they would . . . go back and forth about the staff's ability. And, of course, most of the staff were all women . . . I can recall one that stands out in [my] mind that he had with me as far as Dorothy Alexander . . . she was one of the older members on my staff. And her duty all day was just to sit

> and key journal entries. And he would come and ask, . . . for . . . samples where he wanted us to pull certain journal entries so they could perform their audits. One time we had a conversation. I said, 'Well, Dorothy is going to get the journal entries you requested.' And he said, 'Dorothy Alexander wouldn't know a journal entry if it hit her in the head.'"

(Ellis's Dep., p. 13,L18-p. 15,L1). Ellis always felt from Roberts that "he doesn't believe that women are able to do a job as well as a man, and I always got that from him." (Ellis's Dep., p. 15,L22-p. 16,L4). As an example, Ellis testified:

> ". . . [t]he accounting area was all women except for one male, and that was Christian. Then we had another staff of accountants that worked in what we called Grants and Contracts, they were accountants also, but they handled all the grant accounting, and that staff was all men. . . . But . . the way he interacted with the male professionals there (sic) was very obvious to everyone it was completely different than the way he interacted with the female staff. . . . Our procedures and the way we kept records in the Genral Accounting area was pretty consistent with the way they did in Grants and Contracts area, but we could have the identical procedure but for the General Accounting area, he would . . . make comments about . . . it's not right, it's not enough. And if I pull the exact same procedure out of Grants and Contracts, he would not have made any paper comments about . . . the way that they kept their records or the way they did things."

(Ellis's Dep., p. 16,L4-p. 17,L6). Ellis observed that even her one male subordinate Christian enjoyed a more favorable relationship with Roberts:

> "[h}e interacted with that group, Mr. Roberts and the male accountants in Grants and Contracts, and he made the comment with Mr. Roberts standing there one time to me because I didn't have any children and I wasn't married, and during accounting, you would have to work long hours on closing, 'Why don't you go home and have some babies?' And Mr. Roberts chuckled, and they went on down the hall into Grants and Contracts. So, . . . it felt like even though it was all black – it's a black establishment, it felt like a good-old-boy system but just female versus male instead of white people versus black, and that was just the environment."

(Ellis's Dep., p. 17,L7-22). Ellis recalls signing a document that might have been a petition about Roberts' conduct:

> "Some of us signed witnessing a behavior that he [Roberts] had toward a female staff member at the university. . . . I believe it was Tom Poitier's secretary. He yelled at her and made some offensive comments. He went in looking for Tom, and she said, 'Well, he's not in right now.' . . . I can't remember what the actual comments was. But she was in tears. And we were just standing their like, what is he yelling about?"

(Ellis's Dep., p. 17,L23-p. 18,L11).

(d) Latonia Franklin kept most of the files for the departments, so if the auditors needed certain files, she would normally retrieve those files, and for this reason, she had to communicate with Roberts. (Franklin's Dep., p. 9,L1-6). Franklin recalls Roberts' conduct:

> "It was very unpleasant working with Mr. Roberts. I really hated working with Mr. Roberts, and I hated the times that we had t do the audits so that I wold have to work with him. . . . I cannot recall word for word, but in our communications with each other, it was as if I was nothing when he was talking, as though I was beneath him when he spoke with me, so anything – it didn't matter what the situation was as far as retrieving a file or if he needed information that I had or anything like that, it was basically how he talked to me."

(Franklin's Dep., p. 9,L12-p. 10,L17). Franklin describes Roberts' conduct as degrading:

> "Because he didn't treat everybody the same way. I mean, if you were Dr. Teamer or if you were Dr. Cole, then there was a level of respect. If you were somebody that worked under him, basically you were beneath him, and he treated you like that you were nothing."

(Franklin's Dep., p. 10,L18-p. 11,L2). Franklin describes her observation of Roberts with male employees:

> "It was pretty much as though they were on the same level, but as far as the rest of us, like Pam and with myself and with the other women in our department, it was completely different. Like I said, it was as though you beneath him."

(Franklin's Dep., p. 11,L3-12). When Franklin was working for Thomas Poitier, the new comptroller after Pressley, her contacts with Roberts continued as before:

> "It was basically the same, whenever he needed information from Mr. Poitier, but by that time, Mr. Roberts and myself weren't on good terms; and basically whenever he would ask me for something, I would refer him to my boss and let my boss ask me. . . . Mr. Roberts and I had had a

> couple of run-ins ourselves; and I got to the point where it was very difficult for me to come to work, and I filed a formal complaint myself. . . . With Dr. Teamer and Mr. Poitier. . . . Basically that he was beyond rude, and I didn't like the way he was treating me, and I just couldn't take it anymore. . . . Basically we talked about my run-ins with Mr. Roberts and the things that occurred. I'd end up in the bathroom crying, upset, ready to go home. . . . Simply that the way he talked to me was very degrading, it was upsetting to me, and I did not want to work with him anymore. I don't remember if I had – I tried to resign at that time or not, but I was – it was just very unpleasant for me to come to work."

(Franklin's Dep., p. 21-p. 23,L19). Franklin recalls their last run-in:

> "I believe we were in the hallway. I can't remember why he had yelled at me or whatever, but I was just really upset. And we had gotten really close to being physical, and I walked away. And I just couldn't take it anymore, and I went to Mr. Poitier and told him what happened. And at that point, I just couldn't take interacting with him anymore."

(Franklin's Dep., p. 24,L12-23). As far as Franklin remembers, there were no actions taken against Roberts: "Basically Mr. Poitier just told me to let it go, just try to let it go, try to get past it." (Franklin's Dep., p. 24,L24-p.25,L5).

(e) Marinetta Blalock recalls she didn't like Roberts' impatience:

> "I didn't understand that. . . . You would get yelled at and you didn't know why. . . . At me. I didn't answer him correctly. . . . It was just I'm

> trying to answer a question, and he would be impatient. You can't give him an answer fast enough."

(Blalock's Dep., p. 8,L22-25; p. 9,L1-p.10,L1). Blalock recalls Roberts made her feel bad: "I didn't want to come to work . . . because I did not know how to conduct myself so that I wouldn't get in trouble with him." (Blalock's Dep., p. 10,L17-24). Blalock testifies she worked with Roberts on a daily basis; she sat at the front desk and often heard Roberts interacting with other people. (Blalock's Dep., p. 20,L23-p. 21,L-6). Blalock testifies about Roberts' tone of voice:

> "It never like raised because the person would just eventually shut up because they – he wouldn't give them a chance to say what they had to say. . . . I thought it was just rude, you know, give people a chance – I know that we all don't have the same educational level, but give people a chance to say what they have to say. No, we may not say it the way you want it said, but give people a chance to say what they got to say."

(Blalock's Dep., p. 21-p. 22,L12). There were two male employees and Blalock did not ever hear Roberts talk over either of the two men: "No. He seemed to be more careful when he talked to men." (Blalock's Dep., p. 22,L14-p. 23,L1). Blalock recalls Teja Singh as the only male she remembers Roberts "was kind of a little hands on. Mr. Singh wouldn't fight back." (Blalock's Dep., p. 23,L2-6). Blalock recalls Mike Womble who sat on the other side of the wall with her; she doesn't know what tone Roberts used with Womble because Roberts "took him to his office. He asked him to come to his office." (Blalock's Dep., p. 24,L1-9). Blalock testifies that she didn't make any formal complaints about Roberts because "I felt like it wouldn't do any good. . . . Because I heard other people making

complaints, and it seemed like nothing was done." (Blalock's Dep., p. 25,L12-18. Blalock recalls Plaintiff complaining about Roberts: "She was just angry because he had – the way he had talked to her." (Blalock's Dep., p. 27,L11-14). Blalock recalls Plaintiff filed a formal complaint about Roberts' conduct toward her and went through procedures and "It seemed like nothing was done. . . . . I saw it because the behavior never changed. . . . I don't know what was supposed to happen, but I'm basing it on the fact that his behavior didn't change." (Blalock's Dep., p. 28,L11-25). Blalock testifies that Roberts did not properly guide her: "If I was doing something incorrectly, tell me. You don't have to yell at me. . . . I mean that belligerent tone of voice. It's no need to talk to me that way, just tell me how you want the work done." (Blalock's Dep., p. 31,L11-18).

(f) Paula Barnes, an accountant, testified that about a month into her employment, Roberts gave her a "clerical-type assignment. It was go to some files, pull some folders, make copies of the information in the folders, put it in alphabetical order, and give it back to him. . . . There was someone else, yes, that could have done that. . . . Marinetta Blalock." (Barnes' Dep., p. 10,L2-25). Barnes recalls she was disturbed:

> "What was disturbing to me was the way he would give me the assignments. . . . It was the way that he would talk. . . . He was rude, abrasive. He didn't treat me as a professional on an equal level, and which I considered us to be. I had just as much experience as he did. He just kind of talked in a condescending way to me."

(Barnes' Dep., p. 11,L8-20). Barnes testifies that she stayed in that office one week after that first assignment from Roberts:

> "Because I refused to work for someone who didn't have any respect for me, and I just could not work with him under those conditions. [B]ut it was simple things, like when he would give me the instructions, he would say, you should be writing this down, simple instructions like pull a file, copy the papers in it, put them in chronological and alphabetical order. There was no need for me to write that, but he made me write it. You need to write that, so I did that. And then he made me read it back to him, those kinds of things. And then, do you understand, and I would say yes. Are you sure you understand. I would say yes. Unnecessary. That was just unnecessary, unprofessional, uncalled for. . . . After I would complete the assignment following those exact instructions that I had to write, he would say, this is not what I asked for. It didn't make sense. His behavior did not make sense."

(Barnes' Dep., p. 12,L9-p. 13,L20). Barnes testifies Roberts did not raise his voice, "but just whatever he said, he said it in such a nasty way. . . . in a tone that's not professional, unnecessary." (Barnes' Dep., p. 14,L18-p. 15,L1).

(g) Betty White recalls her first and last contact with Roberts about four years ago concerning petty cash of $4,000 in her custody after her supervisor Jean Chandler died:

> "I went to turn that money in $4,000, so I called Mr. Roberts. He asked me to come to his office. I can't remember the entire circumstance, but we needed more money. This is petty cash for change for the football game. It was basketball season. . . . When I went there, I stayed in his office I know about 30 or 40 minutes waiting for him; stayed

> there with his secretary. . . . She was getting ready to go to lunch, and she told him that I was out waiting for him. He was in with another young lady. He said, I know she's not waiting on me. . . . Say come on in. He said, I know you not waiting on me. I said, yes, Mr. Roberts, you asked me to come up. He said, I'm with someone now. And so I said, well, you asked me to come up. We need somebody to sign for the $2,000 for – I can (sic) do that since my supervisor has passed. He said, You leave it with me. I said, no, I can't leave it with you. So I walked out."

(White's Dep., p. 5,L-21-25). White describes Roberts' manner of talking to her as very nasty, harsh, and hitting his desk (White's Dep., p. 8,L-p. 9,L8).

(h) Jacqueline Jackson recalls meeting Roberts when he was an external auditor for CAU: "He used to eat in the dining hall at the university. And I'm just a friendly, outgoing person so, . . . when I see somebody I just speak. And I've had the occasion to sit and eat with him. . . . I just thought he was a nice guy, you know, no problems." (Jackson's Dep., p. 9,L4-21). After Roberts became a full-time employee, Jackson recalls her interaction with changed in a negative way when she was trying resolve problems with students' scholarships money:

> "In my interaction with him, I was trying to explain that to him, and he just went overbroad with me. . . . He talked down to me . . . it was just like he didn't know me, he talked to me like I was somebody didn't know what I was doing. He changed my words around and threw them at me. It was just almost degrading, the way he was talking to me. Then I had to back up and say, "Wait a minute. Who do you think you're talking to? You can't talk to me like that."

(Jackson's Dep., p. 10,L11-p. 11,L25). Jackson recalls going back to her office and telling her boss,

> "I will not deal with him. There was other times I've dealt with him, but that particular time was when it was enough that I wasn't taking anymore, because I tried to explain it to him, and he was going to out talk me every time. I would start talking, he would talk, or he would change around what I was trying to say and trying to confuse me. Now, I've been doing this job since '92. I don't remember when he came, but I know my job, and I know how to handle it. I'm still doing the same job. I've never had the confrontation of having to deal with anybody like I dealt with him that day. That day was it. I said I wasn't dealing with anymore. I told my boss I would go above or below. I would not deal with him. I was not used to being treated that way."

(Jackson's Dep., p. 12,L6-25).

(h) Annette Ogletree recalls occasions that she observed Roberts' conduct to be inappropriate:

> "I feel that when you work in an environment and you have females that work in an environment and you have relationships with females outside the work environment, I really don't think that's a good idea that you have relationships with females outside. I'm not saying relationships. I'm saying maybe like a girl-boyfriend type relationship outside of the job."

(Ogletree's Dep., p. 16,L15-p.17,L2). Ogletree recalls a situation with one of her former female coworker, Laquita Davis, (Ogletree's Dep., p. 40,L3-8):

> "I don't know if he was dating her at the time that she was an employee, but I know soon after she

> left Clark, he began to date her. . .. I know that she was having problems with us in the office, and instead of going through the chain of command like she should have . . . like seeing Mr. McLemore, which was our immediate supervisor, she would go over his head and go back straight to Mr. Roberts to . . . advise or tell him about the problems that she was having wihin our office."

(Ogletree's Dep., p. 16,L15-p.17,L23). Ogletree recalls seeing Holliman in the office crying as a result of her contact with Roberts: "She was very upset and crying because she felt as if he was, you know, picking on her. So I mean, she cried on numerous occasions. I've seen her cry after having a conversation with Mr.Roberts." (Ogletree's Dep., p. 35,L24-p.36,L9). Ogletree recalls some of these conversations between Plaintiff and Roberts occurred in his office and a couple of them out in the front:

> " he was out front, . . . asking her the same question over and over and over. And you could see as if he was maybe harassing her in a way. And so after she wouldn't break down and cry in front of him, but after he would leave, she would break down and cry or go to the restroom and cry."

(Ogletree's Dep., p. 35,L24-p.36,L19). Ogletree testifies that she wore her headsets as a way of not having to focus on Roberts because:

> "Basically to keep my sanity because that pacing back and forth used to get on my nerves so bad, you know, because it's as if it was like he was looking for something, looking for something to complain about. So I felt if I tuned him out, you know – a lot of times I would listen to gospel music, you know, something to sooth me or relax me or some jazz. So if I put my mind somehwere else and not have to focus on him back and forth,

> you know, I felt like I could get through the day, I'd be fine."

(Ogletree's Dep., p. 37,L22-p. 38,L13). Ogletree recalls Roberts blaming her and Plaintiff for something McLemore did and Roberts had McLemore to write up Ogletree and Plaintiff:

> "Nitpicking, memos. . . . We even had a time where he addressed a letter to Mr. McLemore in reference to writing me and Ms. Holliman up in reference to a couple checks that had went out, . . .And so he had Mr. McLemore write me and Rita up for that occasion for some checks that was mailed out, and me nor Rita mailed those checks out. Those checks were mailed out by Mr. McLemore, but we were the ones that was end up being written up for it."

(Ogletree's Dep., p. 46,L10-22). Ogletree recalls the occasion she heard her coworker Michael Womble saying words to the effect that in reference to Plaintiff, "if looks could kill he would kill you" in speaking of Roberts: "During working hours; and I guess apprently he must have observed Mr.Roberts looking at Ms. Holliman at some period of time, and he made that statement, if looks could kill." (Ogletree's Dep., p. 76,L17-p.77,L4.

(i) Pam Pressley was managing the accounting function and the general ledger when Roberts was assigned to audit CAU's federal programs. Pressley described Roberts' demeanor as:

> "He could be very charming and friendly in a group where there were people who he felt responsible to . . . But one on one, he could be very abusive in his stance and the way that he spoke, not that he was a yeller, I can't remember him yelling or raising his voice at me, but the just contempt that could come through in his voice and

in his demeanor could be very intimidating."

(Pressley's Dep., p. 8,L14-9,L2). Pressley recalls the occasion, after Roberts became a full-time employee at CAU, (Pressley's Dep., p. 11,L1-2), that ended her career at CAU:

> "I went into his [Roberts] office to talk to him about something that had to do with business. . . I am pretty forceful . . . I will tell you what I think, and then you tell me what you think. And that doesn't mean that I'm going to back off. And . . . I can't specifically remember what we were talking about, but he told me to get the fuck out of his face. And that's when I decided that I couldn't work there anymore, so I immediately looked for a job. . . . And even after I gave them two weeks' notice, he and Teamer [vice president for Finance] wrote me letters telling me that . . . at my level, I should . . .feel professionally responsible to give them more notice and have them prepare better to replace me. But I – at that point I didn't care because there was no consequence to him for speaking to me in that manner. And I actually went over to Dr. Teamer's office, told him what Nate had said to me and told HR [Human Resources] what Nate had said to me and filed a complaint using their rules, and there was no consequence."

(Pressley's Dep., p. 9,L3-p. 10, L5). Pressley recalls other occasions:

> "I can tell you that we would be standing – the accounting area was a room that had probably four desks lined up with people, employees on either side. And I would engage in conversation with him at the front of the room, and there were, . . . eight witnesses to just whatever he wanted to say to me in the most disrespectful manner, in the most

> intimidating manner, . . . slamming doors, marching back and forth . . . just like a Napoleon or something, . . . it was bad."

(Pressley's Dep., p. 11,L7-20). Pressley acknowledges that Roberts could be abrasive to male employees

> "but he wouldn't take it to the point of that intimidating stance . . . he was short tempered, or he would be edgy, but . . . he wouldn't be as openly hostile with the guys. . . . sometimes in my stress from work, I can be curt, . . . and he can be curt. . . .that kind of thing you would kind of expect or look over. But . . .he would be openly hostile to women. I mean, it would appear to me that he was doing it for the purpose of intimidating."

(Pressley's Dep., p. 12,L10-25). Pressley recalls observing Roberts' treatment of other female subordinates:

> ". . . there's a woman, Saba [Tesfamariam, Pressley's Dep. 18,L12], who is Ethiopian, her husband worked in Grants and Contracts, Kif. . . . he [Roberts] made her tremble; . . . he was just awful to her. . . . speaking to her as if she were incompetent, that haughty tone of voice, only more pronounced than haughty even. It was just dripping with sarcasm, body presence closer than you needed to be in order to be respectful, . . . speaking to them [Saba and Kif] in just disrespectful tones. And the things he said were implied that they didn't know what they were doing, that they were incompetent, or they didn't do it in a timely manner or . . . It wasn't worth his time, that kind of thing."

(Pressley's Dep., p. 13,L8-19). Pressley recalls that the female employees didn't always engage Roberts and confront him "because it was a guarantee that the matter

would escalate. . . ." (Pressley's Dep., p. 15,L11-18). Roberts "would just be as rude as he needed to be to get what he wanted when he wanted or, . . . he would intimidate the women until they were in tears or cowering in a corner somewhere. It was disgusting." (Pressley's Dep., p. 15,L20-24). Pressley took her complaints to CAU Human Resources department ("HR") and was told: "we'll look into it, placating, I felt. . . . and never heard anything again." (Pressley's Dep., p. 15,L25-p. 16,L10). Pressley turned in a written complaint to HR and never received a response. (Pressley's Dep., p. 16,L11-15). Pressley complained to Dr. Teamer, vice president of financial affairs, and received no response to her written complaints about Roberts. (Pressley's Dep., p. 16,L16-21). Pressley recalls on a daily basis, may not be every woman every day, "but, . . . with very little provocation, he could be nasty. So he could go maybe two or three days and would be a pleasant guy, I would think, that's my personal experience. However, something would happen to trigger him, and he could be very nasty." (Pressley's Dep., p. 18,L14-24). Pressley recalls when the announcement was made that Roberts would become a full-time employee at CAU:

> "I made a conscious decision to tone down my own personality so that I wouldn't provoke him. I didn't want to be in a position where, number one, I was reporting to him, and, number two, I was going to have to deal with the things that I'd seen him do or experience myself when he was auditor. . . .I felt, . . . some reservation from the moment the announcement was made, I couldn't believe it."

(Pressley's Dep., p. 18,L25-p.19,L13). Roberts' negative behavior is well-known on CAU campus. (Pressley's Dep., p. 24,L16-18). Pressley felt that when it got to the point where Roberts felt comfortable telling her "to get the fuck

out of his face at the workplace, I knew then . . . that nobody had responded to anything, and that he felt perfectly comfortable doing what he wanted to do, and I got away." (Pressley's Dep., p. 25,L5-11). Pressley further describes Roberts conduct:

> "He was talking to me in a very disrespectful tone in front of people who worked for me. I felt that he was undermining my authority. I just felt unsafe and uneasy around him. I could tell that he was so angry sometimes that I didn't know what he would – you know what I mean? I just didn't feel safe. . . . It was beyond, I don't like the way he manages people. I think what he does is sexist. I think that he's a chauvinist. It went beyond that. It got to the point where I really felt unsafe."

(Pressley's Dep., p. 25,L16-p. 26,L7). Pressley couldn't wait on the administration to take appropriate action against Roberts:

> "I couldn't wait anymore to see . . . if the executives at Clark Atlanta University were going to take action against Nate and other men who were abusing the power that they had in their positions at the university. I couldn't wait for them to say, you know, you guys are really doing a great job or not doing a great job. Move on. We're going to stop harassing you at work and let you do – you know, I couldn't wait. It wasn't going to get fair. . . . I was waiting for fair treatment. I was waiting . . . for an impersonal objective evaluation of our performance, and we weren't getting that."

(Pressley's Dep., p. 27,L3-21). Pressley recalls another CAU comptroller, Reggie Banks, who was similar in temperament to Roberts:

> "He was very abusive to women, specifically to me, and that was the one other instance where I felt unsafe. Finally this guy . . . he left pretty quickly after they hired him. But he, too, . . . was very rude, very poisonous, venomous in . . . the way he spoke to women. It was horrible."
> (Pressley's Dep., p. 28,L2-12). Pressley complained about Banks to the then interim vice president of finance and "he just . . . kind of laughed it off."

(Pressley's Dep., p. 29,L10-22). Pressley observed Roberts' treatment of Plaintiff:

> "Yes, when he . . . asked questions, . . . he would ask her questions . . . in a way that you would think he believed she needed to jump up right now and have the correct answer. So, . .. he would . . . walk up, fire a question . . . at her. And then she would have to . . . try and figure out what it was he wanted, . . . Why are those books up there? . . . That kind of thing. And there was actually an accounts payable manager, Rita [Plaintiff nickname at work] was the supervisor, . . . a guy that he could actually go to and ask these questions without ever contacting the clerical staff or the actual working people and not intimidate them. But he would choose to talk to the line staff people in . . . just disrespectful. That's the way he did it. . . . With Rita, it was the way . . . that's how he talked to the women in our area. So if it's not Rita, it's . . . other women in the area, Marinetta, Saba, me, his assistant, . . . Melba . . . some days he would be a very charming, nice guy, and come back 20 minutes later, and he'd be just like Hitler foaming at the mouth and, . . . barking orders and expecting people to jump. . . . just craziness."

(Pressley's Dep., p. 32,L23-p. 34,L15). Pressley observed Roberts treated male employees different than the female:

> "Now, there were select people . . . there was one guy that I recall, Teja Singh, who was an older man, an Indian man. And . . . if there were a guy who suffered treatment similar to what the women suffered, I would say Teja had probably something that was closer to being treated that way than anybody else. Nate could be very disrespectful to Teja. . . . I know Mr. Singh looked differently. . . . But I know that . . . when I left the university and I went back to visit, . . . Mr. Singh had been demoted from the Director of Grants and Contracts where he was at my level to a guy sitting in the accounting pool with the eight desks. When I went back, he was sitting at one of those desks. And now he's not at the university anymore."

(Pressley's Dep., p. 35,L15-p. 36L18).

(j) James Clausell is the principal owner of Clausell & Associates; he contracted as independent federal auditors for CAU for years 1991 through 1998, (Clausell's Dep., p. 5,L21-p. 6,L8), and he did limited consulting work at the Morehouse School of Medicine in about early 1997. (Clausell's Dep., p. 6,L9-22). Clausell recalls the occasion when Eli Phillips, the vice president of finance at the Morehouse School of Medicine, requested the removal of Roberts from the engagement: "He said, well, there was some conflicts with, I think, a staff person." (Clausell's Dep., p. 7,L25-p. 8,L22). Clausell recalls receiving complaints from Pam Pressley asking him to replace Roberts: "she said she just couldn't get along with him, they had problems getting along together. . . . I recall she was saying he was very abrasive. His personality was very hard. He wasn't agreeable," (Clausell's Dep., p. 10,L2-16),

and Clausell recalls Teja Singh complained once or twice about how Roberts was abrasive, aggressive in performing his services. (Clausell's Dep., p. 11,L12-18). Clausell recalls being asked by Dr. Teamer and Dr. Cole about a recommendation on Roberts as a potential employee for CAU:

> "we met to talk about Mr. Roberts taking on a position at Clark Atlanta University. Dr. Cole – and I did talk about him making that transition, asked my opinion can he do the job, is he a good person for the institution. And I deferred – or I did not conclude. I did not give him a definite answer. I said he would have to make that call and as to his personality. . . . my advice to the school was that I didn't think he was a good match. . . . Because of the complaints of Pam and Mr. Singh, and these were people I think he was going to be supervising. And I thought that based on their complaints, it would create a problem within that department."

(Clausell's Dep., p. 23,L24-p. 24,L24). Clausell didn't recall whether he gave this information to Dr. Cole, "but Charles Teamer, I did give that advice to." (Clausell's Dep., p. 24,L25-p. 25,L3).

(k) Thomas W. Cole, Jr. retired from his position as president at CAU; he was president from July 1, 1989 until July 31, 2002; Dr. Teamer was the chief fiscal officer, vice president for finance, reporting directly to Cole. (Cole's Dep., p. 6,L19-p. 7,L16). Dr. Cole recalls a discussion with Dr. Teamer regarding consideration of hiring Roberts, but he doesn't recall whether it was in advance of hiring Roberts or not. (Cole's Dep., p. 12,L1-14). Dr. Cole denies any complaints about Roberts' conduct with respect to female employees were brought to him. (Cole's Dep., p.

18,L4-23). Dr. Cole Recalls Dr. Teamer discussing Roberts' leadership style: "I don't remember any specific conversations other than his observation that Mr. Roberts was – didn't have the best people skills. But nothing beyond that." (Cole's Dep., p. 18,L24-p. 19,L7). Dr. Cole denies being made aware of an EEOC complaint being filed about Roberts' conduct. (Cole's Dep., p. 19,L12-16). Dr. Ross, who replaced Dr. Teamer as the executive vice president, did not bring any complaints about Roberts' conduct to Dr. Cole. (Cole's Dep., p. 20,L10-20). Dr. Ross did discuss Roberts' leadership style with Dr. Cole, calling Roberts "a typical bean counter, which meant that they focused mostly on numbers rather than on people." (Cole's Dep., p. 20,L21-p. 21,L4). Dr. Cole denies Bobby Young ever brought to his attention any complaints about Roberts' conduct concerning female employees. (Cole's Dep., p. 21,L8-11).

(l) Thomas R. Poitier recalls LaTanya Franklin bringing a complaint to him about Roberts and he suggested she take it to Dr. Teamer. (Poitier's Dep., p. 15,L9-20). Poitier recalls the nature of the complaint:

> "Mr. Roberts was looking for me, and he asked her where my whereabouts. And at the time, she wasn't sure. She said, 'Don't know.' And he suggested she find me quickly and do her job, so she should find me, do her job and let him know where am I. And he said it to her in such a way that it was offensive to her, as she told me."

(Poitier's Dep., p. 15,L21-p. 16,L5). Poitier recalls Ms.Franklin stating Roberts used profanity: "That's your damn job. Why you don't know where he is." (Poitier's Dep., p. 16,L6-11). Poitier recalls Ms. Franklin was very emotional: "She was offended by it. And I tried to calm her down and tried to say it to her like we should move on, try and get by this point." (Poitier's Dep., p. 16,L12-17).

Poitier recalls mentioning this situation to Roberts: "I have [to]repeat what he said he said, 'That damn girl doesn't know what she talking about," as he told me. But I said, 'She obviously – Nate, she's upset about something. Something went on. . . . I'm not here to say what happened but something happened, and she's near tears or crying.' So he said, 'She didn't know what the hell she was talking about. The damn girl didn't know what the hell she was talking about.' . . . Those are his words." (Poitier's Dep., p. 16,L20-p. 17,L11). Poitier recalls supervising Plaintiff and knowing her to be a: "Very good worker, exceptional worker, did what I asked, did it very timely and without any hesitation. I had no problems with her work ability. I would say a very solid worker." (Poitier's Dep., p. 13,L21-p. 14,L5).

(m) T. J. Singh "I don't remember any major conflicts." (Singh Dep., P.12) Singh testified in a general sense that a subordinate employee would say "the accountant is hard on me." (Singh Dep., P.21). Singh did not receive a single written complaint from any of his subordinate employees about Roberts. *(Id.)*. Singh testified that his subordinate employees might have said Roberts was always pushy. *(Id.)*. Singh's subordinate employees did not report to Singh any unusual incidents involving Roberts. *(Id. at* P.22). Singh testified that to best of his knowledge he doesn't think any of his subordinate employees ever came to him crying and saying Roberts treated them in a demeaning manner. *(Id.)*. Singh testified that he doesn't recall any of his subordinate employees complaining to him about Roberts harassing them. *(Id.)*. Singh testified that nature of problem with Roberts had to do with meeting Roberts' deadlines. *(Id. at* P.23-24). Singh testified there did come a time he took work complaints about Roberts to Bobby young. *(Id. at* P.24). Singh testified that there were occasions or conflicts with Roberts where he felt Roberts

was demeaning him. *(Id. at* P.25). Singh felt Roberts was demeaning him because Roberts was always "rush, rush, rush of the work" and "do this and do that," and "he was thinking that I don't know what I'm doing, and then I would think he does not know what he's doing." *(Id.).* Singh testified that he has two or three memos at the university about his problems with Roberts. *(Id. at* P.27). Singh testified that the type of problem he was having with Roberts was with the work. *(Id. at* P.29). Singh testified that his complaint was not Roberts it was mostly Dr. Ross when he said to Singh personally "I will fire you," and the problem started at that point. *(Id. at* P.30-31). Singh testified that sometimes Roberts would come to him in an aggressive manner asking for things. *(Id. at* P.40). Singh testified Roberts did not ask him the same question over and over because "I knew, you know, what I need to do." *(Id.).* Singh testified that he did not observe Roberts asking the same question more than once to any of his subordinate employees. *(Id.).* Singh testified that sometimes Roberts had a communication problem, "he would come, you know, like he would shout at you, . . ." *(Id. at* p.41). Singh's opinion was Roberts could have used a better management style. *(Id.).* Singh characterized his working relationship with Roberts as "Just a regular normal, you know, supervisor, employee and supervisor." *(Id. at*P.48). Singh testified that he doesn't remember Roberts ever saying anything that he felt was derogatory relating to his national origin. *(Id.).*

(n) Melba Carmichael testified Roberts was her immediate supervisor entire four years. (Carmichael Dep., P.8, L6-12). She had contact with Roberts on a daily basis. (Carmichael Dep., P.8, L20-23). She complained to Bobby Young, vice president of finance and administration, Roberts immediate supervisor, (Carmichael Dep., P. 9, L2-6):

> "Mr. Roberts was just rude and nasty, he just had a personal attitude against certain people, and he was just nasty and talked to you as if you were a child. And it was very inappropriate and I'm not a child and I'm not going to be disrespected by anyone."

(*Id. at* P9, L7-15). Roberts displayed this rude and nasty attitude basically to women. (*Id. at* P.9, L16-19). A Situations that stand out in her mind:

> "Just – he would just come in with a nasty attitude; and if you didn't just jump whenever he said something, he was just nasty. . . . "He tried to intimidate by just being nasty, just saying certain things, just if you respond to him in a certain way or just respond, if he – he would try to make you feel that you were stupid, that you don't know what you're talking about, and you don't have enough brains to think for yourself."

(*Id. at* P.10, L4-14). Sometimes Roberts would not respond to her but would just look at her and then would go in his office and slam the door. (*Id. at* P.13, L6-10). She had these types of interactions with Roberts basically several times a day, maybe two or three times a week. (*Id. at* P.13, L11-14)

> "In particular, sometimes he would just act like you don't have any sense. . . .he'll tell you to do something and then you do it and then he will come and say something like – explaining to you like you don't have sense enough to read the directions or follow through and do whatever you need to do."

(*Id. at* P.13, L18-p.14L1.). She felt Roberts was going out of his way to find fault with her. (*Id. at* P.14,L21-24). She complained also to Michael Lecour, the director of human resources, about Roberts' conduct toward her. (*Id. at*

P.15,L3-10). Roberts would throw his hand out – throw his hand out as if to say, Hush, that's enough; I don't need anything else said to me by you. (*Id. at* P.16,L10-18). After the Grants and Contracts department was removed from Roberts' supervision, he commented to Carmachiel something to the effect of "it was being given to Alene Denson and Janet Scott, women, who couldn't think, I'm sure." (*Id. at* P26,L22-p.27L4-6). As Roberts's secretary, Carmichael observed Roberts's interaction with other female employees at CAU. (*Id. at* P.28,L4-8). Carmichael recalled occasions when Pam Pressley and Roberts would meet in his office. She would hear loud noises and then she would hear Roberts' raising his voice to Pressley, and Pressley would come out of Roberts's office just upset and very angry at him. (*Id. at* P.28, L9-22). She observed Roberts treated male employees different from female employees:

> "When they came in, it was like everything was fine, . . . anything they did was fine, any report that they did was fine. . . . But if a male came in and something was incorrect or not satisfactory, he would just be nice and calm and say that, okay, just fix it and whatever. Because he didn't bully men. He tried to bully women. . . . on the other hand, if a woman came in with the same thing, some of the accounting assistants would come in, and Saba and Victoria, those two in particular have come in, and when something was incorrect, he would just talk to them – and the door would be open so I could hear, because my desk was right outside of his door, so I could hear a lot of things. So I wold hear him say things like, This is not correct. Why didn't you – did you read? Did you do your research? And not, could I help you or is there a problem or whatever. But he would say

> things to a woman basically in a manner that tried to make or made them feel inadequate or stupid or dump or you don't understand what your're doing. Why didn't you come to me? I could do it better. I could show you the way. And he didn't treat the men in that fashion. But I have seen him have Saba in tears because of the way he spoke to her, and Victoria as well. She didn't cry, but she ended up leaving. She just gave her two weeks' notice, I think, a few weeks after that particular incident."

(*Id. at* P.28, L23-p.30L13). Roberts spoke to Daryl Givens, from the grants and contracts department, with respect. (*Id. at* P.31, L4-25). If something v asn't done or the reports weren't correct in payroll, Roberts wouldn't talk to Freddie Greer the way he talked to female employees:

> "It was like it was okay that this happened or anybody can make an error and it was smoothed over as if, okay, just fix it and then come back and see me. Whereas I observed him not talking that way to women – to certain women in the general accounting area."

(*Id. at* P.32L6-p. 33, L12). Carmichael observed Roberts's interactions with Holliman.

> "I've notice him talking to Ms. Holliman – I had noticed him talking to Ms. Holliman in an intimidating and infuriating manner, as if he thought she couldn't think, she didn't – that she was stupid and just the manner in which he talked to her."

(*Id. at p. 34, L4)*

> "There were several times, but one particular time she was standing at my desk, and he was – you, she was trying to talk to him, and he just cut her off, like, That's enough; I don't need to hear any more and just be quiet, basically, just like he

would talk to a lot of women. Just be quiet, listen to me, like what I say is important; what you say is less important."

(Id. at p. 34, L10)

A few times, Holliman was sick and had to go to the doctor. When she would come in, Roberts would demand a doctor excuse and require Holliman to fill out forms for absenteeism even though Holliman was in compliance with CAU policy. (*Id. at* P.34,L18-p.35L23). Carmichael observed it seemed Roberts was trying to keep record on just about everything Holliman did. (*Id. at p.37).* To her knowledge, Carmichael never heard Roberts ask McLemore to report on Ogletree or Womble. (*Id. at* P.38, L18-24). She observed Roberts started this process of watching Holliman after she went to Bobby Young about Roberts's conduct. (*Id. at* P.38, L25-p.39L25). Carmichael first observed Roberts displaying a negative attitude toward Holliman around Spring of 2000 until Holliman went on medical leave the next year. (*Id. at* P.40,L12-25). Roberts did not require Carmichael to keep track of any of the male employees in grants and contracts. (*Id. at* P.43,L6-10). Carmachiel She observed the relationship between Davis-Meyers and Roberts changing from being just friendly: "They started going out to lunch sometimes, just the two of them, and she called him a lot from her phone or if she was out or off, she would call him from her cell phone or from her home phone." (*Id. at* P.65, L23-pp.66L21). Carmichael observed that sometimes Roberts and Davis-Meyers would leave together when they would get off work, and one occasion, Carmichael, Holliman, Sullen-Ogletree observed Davis-Meyers and Roberts at his car and it appeared that they were cuddling. (*Id. at* P.67, L9-23 and p.68, L5-12). Carmichael testified Roberts moved into one of the university houses and Davis-Meyers moved in with him, and this occurred during Davis-Meyers was employed

in the Accounts Payable department under Roberts's supervision. (*Id. at* P.68,L17-p.70L13). Carmichael testified Davis-Meyers mentioned to her that she was quitting because she found another position and also that she didn't like the people in accounts payable department and they didn't like her, in particular Annette Sullen (*Id. at* P.70,L20-p.71L724). McLemore made comments to Carmichael about Roberts's conduct toward Holliman: McLemore said that "Mr. Roberts seemed to be picking on Rita, for whatever reason." (*Id. at* P.80, L11-24). Roberts was using McLemore to make Holliman fill out unnecessary paperwork. (*Id. at* P.8,L21-p.83L5). Carmichael observed Roberts shouting or yelling at Holliman. (*Id. at* P.88,L6-15). Carmichael observed Roberts shouting or yelling at Victoria and Saba, Pamela Pressley, Barbara Williams and raised his voice to Ms. Scott. (*Id. at* P.88,L16-24). Carmichael believes Roberts's conduct was more demeaning towards females than to males because it was more directed to females. "I heard him say these things or talk more in this manner towards females than towards the men." (*Id. at* P.90, L25-p.91L8). Carmichael recalled Roberts making negative remarks about Mr. Tesfamariam and Mr. Singh, both of same Indian nationality: Roberts would just say certain things in conversation, "like those people" or "those type of people do this or they don't do that or they don't believe in this or they believe in that or they don't observe certain things the way we do or they run their houses – they're over their women and they tell the women what to do and the women do it and don't say anything." (*Id. at* P.92, L23-p.93L11). Roberts told Carmichael that Holliman filed a complaint with human resources. (*Id. at* P.102, L11-18). Roberts' attitude toward Holliman changed around the time Roberts told Carmichael about Holliman filing a complaint with human resources. (*Id. at* P.102,L19-21). Carmichael

observed Roberts's more negative attitude toward Holliman lasted until Holliman left CAU. (*Id. at* P.102,L22-25 and p.105L1-9). Carmichael testified that Roberts would go out to drink sometimes with Elton Hugee and Fred Burks. (*Id. at* P. 161,L3-11). There were occasions during the workday that Carmichael smelled alcohol on Roberts' breath. (*Id. at* P.161, L12-15). Carmichael smelled alcohol on Roberts' breath on frequent occasions, "I would say at least maybe three times a week." (*Id. at* P.161,L16-25). Roberts could be nasty with males, but most of the time to females. (*Id. at* P.163,L2-9). Carmichael testified Roberts speculated about whether Holliman had filed a complaint with EEOC. (*Id. at* P.165,L21-p.166L3). Roberts later mentioned to Carmichael that he had received some information from human resources in regard to Holliman's EEOC complaint: he said based on his conversation with Ms. Lytle, he believed Holliman filed a complaint with EEOC. (*Id. at* P.166,L4-25).

(0) McLemore testified that Holliman exhibited this high energy level and enthusiasm for her job from February 1998 to about January 2000, when it started slowing down. (McLemore Dep., P.56,L12-18). McLemore testified that there came a time when Holliman would meet with him in his office and complain about the problems she was having with Roberts. *(Id. at* P.56,L19-22).
McLemore testified that Holliman's complaints really started after her health started deteriorating and she had to leave: "She took a leave of absence, and when she came back, it didn't start initially, but a few months afterwards." *(Id. at pp.* 56-57). The general operating procedure between McLemore and Roberts was Roberts would go to McLemore if Roberts had a question about a matter and Roberts left it up to McLemore to get the answer. *(Id. at* P.68, L3-7). Holliman complained to McLemore that Roberts was condescending: "the way he talked to her was

not what she felt was the right way to deal with a subordinate." *(Id. at* P.74, L2-14). McLemore testified Holliman complained Roberts "would ask her a question, she would give her answer, he would ask the same question again and sometimes several times, and she only had the one answer." *(Id. at* P.74,L15-22). McLemore testified Holliman also complained Roberts was talking to her in a louder manner. *(Id. at* P.76,L9-P.77,L3). McLemore testified that Holliman coming to him more frequent with complaints about Roberts was not a distinct change in Holliman's behavior before May 2000:

> "I wouldn't say that it was a change in her behavior, but the fact was Mr. Roberts seem to have a change in behavior and could – I don't know what was the problem; but he seemed to come to them a little more, and prior to that, his coming to my staff was infrequent."

(Id. at P.77,L10-L17). McLemore did not consider Holliman's direct complaints about Roberts to be rumors: "That was what she felt," and that what was happening to her as she related it to him. *(Id. at* P.82,L14-20). McLemore testified that it was pretty consistent in what Holliman was saying to him and some of the kinds of things he heard through rumors about Roberts' conduct. *(Id. at* P.82,L21-p.83,L3). When Holliman came to McLemore with her complaints about Roberts, he considered her complaints to be a grievance and he confronted Roberts with those. *(Id. at* P.83L4-16). McLemore testified that when he confronted Roberts about Holliman's complaints, "I told him I would appreciate it if he would come to me if he had some information he needed and let me go from there with the situation, and he said he would work with me on that. I said okay." *(Id. at* P.83,L17-22). McLemore testified Roberts didn't keep his word, "Well, it happened more than one – on one occasion, so evidently he hadn't."

(Id. at P.83, L23-25). McLemore testified that he was trying to alleviate any tension by redirecting Roberts back to the prior procedure they had established where Roberts would come to him first and then McLemore went to his staff and reported back to Roberts. *(Id. at* P.84,L1-8). McLemore testified that neither Ms. Sullen [Annette Ogletree] nor Michael Womble came to him complaining about Roberts. *(Id. at* P.86-L9-24). McLemore testified that "there was a lot of complaints" from Holliman about Roberts' conduct. *(Id. at* P.89,L19-22). McLemore testified Holliman did tell him that part of the reason she was feeling so bad, her joints were hurting or she couldn't walk was because of the stress that Roberts was creating in her work. *(Id. at* P.97,L8-14). McLemore testified Holliman might have said words to the effect that something needs to be done because Roberts' conduct was affecting her health. *(Id. at* P.97,L18-21). McLemore did not see Holliman as a troublemaker by going to Young because she did take her complaints about Roberts to McLemore first. *(Id. at* P. 100,L2-24). After Holliman complained to CAU's human resources department about Roberts' conduct, McLemore said no one from human resources contacted him. *(Id. at* P. 105,L25-p.106,L3). After Holliman complained to Bobby Young, Young did not contact McLemore regarding Holliman's complaints about Roberts' conduct. *(Id. at* P.106,L4-7). Holliman told McLemore the reason she was filing her complaint with EEOC was because "she felt she was being singled out" by Roberts. *(Id. at* P.106,L8-24). McLemore thinks there was some more complaints from Holliman about Roberts' conduct after she filed her EEOC charge. *(Id. at* P.125,L1-12). Based on McLemore's observation, the only relationship that was causing distress in the workplace with Holliman was the relationship between her and Roberts. *(Id. at* P. 127,L22-p.128,L2).

After reading his deposition, McLemore recalled the following events:

"1. Mr. Nathaniel Roberts would raise his voice only to women whenever he wanted to emphasize a point. When he talked to women he would talk in an extremely aggressive manner. The women that I am aware of this happening to are: Eulice Holliman, Saba Tesafarim, and Marinetta Blalock. When Mr. Roberts wanted to emphasize a point to men (Teja Singh), he would take them into his office and talk to them. When I observed making a point to men he would not talk to them in the same tone as the women.

2. After Mr. Roberts spoke to Mrs. Holliman in his aggressive tone asking her questions and she replying with answers to the best of her ability, she would come into my office afterwards and complain with bouts of crying.

3. The conflicts between Mrs. Holliman and Mr. Roberts were seemingly taking a toll on her health.

4. Mr. Roberts instructed me through the use of memos to reprimand Mrs. Holliman on several occasions.

5. When Mrs. Holliman would have a doctor appointment, Mr. Roberts would always want her to fill out a leave slip and it was not necessary because she would come to work before the 3 ½ hours that were require by the university to complete a leave slip.

6. Mr. Roberts would on occasions call me into his office and discuss Mrs. Holliman work and her work habits. Mr. Roberts would ask nothing about my other subordinates. My overall observation was that Mr. Roberts was seemingly targeting Ms. Holliman, because he only had issues with her and he was only seeking to reprimand her." See Declaration of Richard McLemore, June 3, 2004.

(p) Darayl Givens testified he did not have direct contact with Roberts, that the work was directed through Mr. Singh to him and other subordinate employees.

(Givens Dep. 11). Roberts did not bring any complaints to Givens about his work. *(Id. at. P.15,L9-13).* Givens testified that he did not have conflicts with Roberts. *(Id. at. P.15,L14-16).*

(q) Bradley T. Goldsby testified that on the occasions he went to Roberts' office to get some information, he never engaged in any heated discussions with Roberts. (Goldsby Dep., p.12,L14-17). Roberts never talked to him in a demeaning or condescending manner. *(Id. at p.12,L18-23).* Roberts never raised his voice at him or act in an abrasive manner with him or act short with him or act impatient with him. *(Id. at p.13,L6-18).* Goldsby testified that he had heard rumors that Roberts would talk to women in "a belittling way, demeaning way" and "I want to say almost seemed like common knowledge." *(Id. at p.21,L7-17).*

(r) Malvern G. Edwards testified Roberts did not approach him in a demeaning or abrasive manner when Roberts came directly to him for information. (Edwards Dep. P.10,L2-15). Edwards testified he never had any conflicts with the manner Roberts communicated with him. *(Id. at p.10,L16-19).* Edwards did observe conflict in the interaction between Saba and Roberts. *(Id. at p.12,L12-16).* Edwards observed very upset reaction on Saba's face after communicating with Roberts. *(Id. at p.12,L20-23).*

Edwards recalled Singh commenting that he didn't like the way Roberts talked to him, but Singh did not use the word "demeaning." *(Id. at p.18,L14-24).*

(s) Freddie Greer, Jr. testified that he has "never, not once" had any conflicts with Roberts. Greer testified Roberts is his friend, "Been over to his house, . . . go visit, talk to him once a week now. We're very close. Never had a conflict with him." (Greer Dep. P. 15, L8-24).

Defendant's Material 31: Roberts also noted that he took "the allegations made by [Plaintiff] very seriously." (Id.)

Plaintiff disputes ¶ 31: Plaintiff incorporates herein her response to Defendant's ¶ 30 above. Carmichael testified she observed Roberts started his process of watching Holliman after she went to Bobby Young about Roberts's conduct. (Carmichael Dep., P.38,L25-p.39,L25).

Defendant's Material 32: Roberts questioned Plaintiff's assertion that she was "voicing concerns for the entire staff," given that ""no additional staff were identified or others involved in the incident she recites." (Id.)

Plaintiff disputes 32: Plaintiff incorporates herein her response to Defendant's 30 above.

Defendant's Material Fact 33: Roberts flatly denied the allegation regarding his having alcohol on his breath as a "blatant untruth" which, in his opinion, was "consistent with the other exaggeration of events as presented in Ms. Holliman's letter." (Id.)

Plaintiff disputes 33: Carmichael testified that Roberts would go out to drink sometimes with Elton Hugee and Fred Burks. (*Id. at* P. 161,L3-11). There were occasions during the workday that Carmichael smelled alcohol on Roberts' breath. (*Id. at* P.161, L12-15). Carmichael smelled alcohol on Roberts' breath on frequent occasions, "I would say at least maybe three times a week." (*Id. at* P.161,L16-25).

Defendant's Material Fact 34: Roberts closed his letter response by stating that: "I think this extremely important that we address this matter immediately." (Id.)

Plaintiff disputes 34: Plaintiff incorporates her response to Defendant's Material Fact 26 herein. 140.

Roberts did not meet with Holliman regarding her internal complaint. (Roberts Dep., P.170,L14-19). Young wrote in Roberts's annual review for October 2000 to June

2001, Plaintiff's Exhibit 6 to Roberts' Dep., "I recommend Employee Assistance Program training in the following areas, employee performance issues." (Roberts Dep., P.187,L11-17). Roberts never contacted CAU Human Resources department to set up an employee assistance training in the area of employee performance issues. *(Id. at* P.192,L9-12).

Defendant's Material Fact 35: As part of Roberts' annual performance evaluation, in the section entitled "People Management Assessment," Young rated Roberts as only "partially" meeting expectations in the area of "Leadership Effectiveness" and Young adopted HR's recommendation that Roberts be directed to attend specific Employee Assistance Program ("EAP") training courses. (Young Dep., p. 172; Young Dep., Exh. 4).

Plaintiff disputes 35: Plaintiff incorporates her response to Defendant's Material Fact 30 above that demonstrates Roberts wholly ineffective in leadership.

Defendant's Material Fact 36: Young stated that one of the EAP courses was designed to address Roberts' conduct and how he interacted with others. (Young Dep., pp. 177-178).

Plaintiff disputes 36: Plaintiff disputes the implication of any compliance by Roberts with Young's instructions to take EAP courses. Plaintiff incorporates her response to Defendant's Material Fact 34 above.

Defendant's Material Fact 37: Plaintiff. did not bring any further complaints regarding Roberts to Young or to CAU's HR department. (Young Dep., p. 176).

Plaintiff disputes 37: Plaintiff disputes the implication that Young or CAU's HR department ever properly investigated and resolved Plaintiff's internal complaint filed orally March 14, 2001 and writing March 15, 2001. Plaintiff incorporates her response to Defendant's Material Fact 26.

Defendant's Material Fact 38: In support of her June 22, 2001 EEOC charge, Plaintiff prepared a four-page document entitled "Notes on Accounts Payable" that consisted of Plaintiff's typed summary of nine (9) alleged incidents involving Roberts during the period December 13, 2000, through June 19, 2001.(Holliman Dep.,140; Holliman Dep., Exh. 8).

Plaintiff disputes 38: Plaintiff disputes the implication that the extent of Plaintiff's complaints about Roberts' conduct was contained in a typed summary. Plaintiff incorporates her Affidavit dated August 2, 2004, as though fully set forth herein.

Defendant's Material Fact 39: Plaintiff is claiming that she was subjected to a hostile work environment based on her sex/gender, female. (Holliman Dep., p 22).

Plaintiff admits 39.

Defendant's Material Fact 40: Plaintiff contends that Roberts routinely spoke to her in a "harsh, militaristic and demeaning tone," and interacted with her in a "disdainful and disparaging manner." (Compl. ¶¶ 11 18-19, 21).

Plaintiff disputes 40: Plaintiff disputes the implication that her complaint denotes each and every negative conduct exhibited by Roberts toward her. Plaintiff incorporates Plaintiff's affidavit dated August 2, 2004 as though fully set forth herein.

Defendant's Material Fact 41: Teja Singh, the former Director Grants and Contracts for CAU, stated that there were occasions in which he "felt Mr. Roberts was demeaning [him]." (Singh Dep., p. 24-25).

Plaintiff disputes 41: Singh gave contradictory testimony. See (m) T. J. Singh under Plaintiff's response to Defendant's Material Fact 30: "I don't remember any major conflicts", (Singh Dep., p. 12); nature of Singh's problem with Roberts had to do with meeting deadlines. (Singh Dep. P. 23-24). Evidence shows Roberts' negative

attitude toward Singh was based on his nationality and not his gender as a male. See (n) Melba Carmichael: Roberts made negative remarks about two Indian male employees, such as, "like those people" or "those type of people do this or they don't do that" and so on. (Carmichael Dep., p.92, L23-p.93, L11). Pam Pressley tells how Roberts demeaned an Ethiopian couple, Saba and her husband Kif. (Pressley, p. 13 and p. 18)

Defendant's Material Fact 42: Singh also testified that Roberts would "shout" at him and ask questions in a "more aggressive way." *(Id.* at 41).

Plaintiff disputes 42: Plaintiff incorporates herein her response to Defendant's Material Fact 41 above.

Defendant's Material Fact 43: David Alexander, Director of Facilities, "complained about Mr. Roberts and the way he communicated with him[,] [and stated] that Mr. Roberts was harsh [and] sarcastic in his tone and in his demeanor." (Young Dep., p. 45).

Plaintiff disputes 43: Plaintiff disputes the implication that David Alexander filed a complaint about Roberts' conduct in the same sense as Holliman's complaint against a successively higher supervisor. Alexander was a direct report to Young and Roberts was not in his chain of command. (Young Dep., p. 46,L21-p.47,L4). Alexander is the Director of the Facilities operation for CAU, that entails oversight of the grounds at the university, the buildings and maintenance of the buildings, and he supervised a staff of approximately 40 or 50 employees. (Young Dep., p. 47,L14-24). The Court should further discount this testimony as hearsay under FRE 802, as no documentation was produced during discovery of any such complaints in response to Plaintiff's Interrogatory 10:

"Please identify all employee complaints of sexual harassment received by defendant (during the relevant time period) and state:

a. The name, title and sex of each employee who was the basis of the complaint;

b. The name, title and sex of the employees making the complaint;

c. The acts or circumstances of each complaint;

d. The date(s) of these acts or circumstances;

e. The action taken by the employer in response to each complaint;

f. The name, title and sex of the person responsible for investigating each complaint;

g. Management' response to each complaint."

Defendant did not produce any such documentation in response to Plaintiff's production request: "PRODUCTION REQUEST NO. 10: All documents related to allegations of discrimination by the Defendant Nathaniel Roberts, Jr. made by employees, customers, vendors or others."

Defendant's Material Fact 44: Bobby Young, Vice President for Finance and Roberts' direct superior, testified that Roberts could be "sarcastic" and "demeaning." (Young Dep., p. 95).

Plaintiff disputes 44: Plaintiff disputes the implication that the relationship between Roberts and his superiors is equivalent to the relationship between Roberts and his subordinate employees such as the Plaintiff. Plaintiff incorporates her response to Defendant's Material Fact 43. In the July 15, 2002 job performance review, item number 8, Young also instructs Roberts to "Abstain from position of rude conduct and sarcasm, and avoid any complaints, written or oral, about rude conduct." (Roberts Dep., P.195, L22-24). Roberts testified that he did not know what Young was talking about in item number 8 of the July

15, 2002 job performance review. *(Id. at* P.195,L22-p.196L2).

Defendant's Material Fact 45: Young stated that during a discussion with Roberts concerning whether or not the University President should have been at a particular meeting, "Mr. Roberts got loud and short and flippant, totally unprofessional.(Young Dep., pp. 95-96).

Plaintiff disputes 45: Plaintiff incorporates her response to Defendant's Material 44 above.

Defendant's Material Fact 46: Pam Pressley testified that "if there were a guy who suffered treatment similar to what the women suffered, I would say Teja [Singh] had probably something that was closer to being treated that way than anybody else. Nate [Roberts] could be very disrespectful to Teja." (Pressley Dep., pp. 35-36)

Plaintiff disputes 46: Plaintiff disputes the implication that the basis of Roberts' negative attitude toward Singh had anything to do with his gender, to the contrary, the evidence shows Roberts' attitude appears based on nationality. See Plaintiff's response to Defendant's Material Fact 41 above.

Defendant"s Material Fact 47: Toyah Ellis observed Roberts' interactions with the employees in the predominantly male Grants and Contracts department, and she stated that Roberts was "abrasive" in dealing with those individuals. (Ellis Dep., p. 65)

Plaintiff disputes 47: Ellis testified that there was a distinct difference between the way Roberts treated female and male employees: it had to do with "camaraderie" but "it was with the male employees Mr. Roberts seemed to be less condescending, to have more of a rapport with them." (Ellis Dep., p.83, L24-p.84,L11).

Defendant's Material Fact 48: Ellis also noted that Roberts is "an abrupt and abrasive person; that's who he is." (Id.)

Plaintiff disputes 48: Plaintiff disputes the implication that Roberts had no control over his conduct. Roberts clearly made choices about who he would berate: "He could be very charming and friendly in a group where there were people who he felt responsible to" (Pressley Dep. P8, L14)

49. Marinetta Blalock noted that Roberts was "belligerent" towards Teja Singh. (Blalock Dep., p. 23).

Plaintiff disputes 49: Plaintiff incorporates her response to Defendant's Material Fact 41.

Defendant's Material Fact 50: Latonia Franklin stated that: "There was another department that we worked in that had basically mostly males in the department, and I just heard [Roberts] had a couple of run ins with people in the department, [and] the head of the department." (Franklin Dep., p. 12)

Plaintiff disputes 50: Plaintiff disputes the implication that male employees in Grants and Contracts department were experiencing the same kinds of problems with Roberts as the female employees. See Plaintiff's response to Defendant's Material Fact 30: (m) T. J. Singh even characterized his working relationship with Roberts as "Just a regular normal, you know, supervisor, employee and supervisor" relationship. (Singh Dep., p. 48); (p) Darayl Givens: he did not have any conflicts with Roberts, (Givens Dep., p.15,L15-16); (r) Malvern G. Edwards testified Roberts did not approach him in a demeaning or abrasive manner, (Edwards Dep. P.10,L2-15).

Defendant's Material Fact 51: Darayl Givens confirmed that he observed Roberts speaking to Teja Singh "in a harsh manner." (Givens Dep., p. 21).

Plaintiff disputes 51: Plaintiff incorporates her response to Defendant's Material Fact 41.

Defendant's Material Fact 52: Givens also stated that Roberts could be "short" and "abrasive" with people. *(Id.* at 24).

Plaintiff disputes 52: Plaintiff disputes the implication that Roberts was being "short" and "abrasive" with people meant he treated female and male employees equally. Givens testified Roberts had a type of authoritative type of personality, heavy-handed type, authoritative, "but, no, I didn't feel humiliated by that." (Givens Dep., p. 18,L12-18).

53. Givens testified about a male employee named Kif who would be in a "heated" mood i.e., visibly upset - after meeting with Roberts in the hallway. *(Id.* at 26).

Plaintiff disputes 53: See (n) Melba Carmichael: Roberts made negative remarks about two Indian male employees, such as, "like those people" or "those type of people do this or they don't do that" and so on. (Carmichael Dep., p.92, L23-p.93, L11).

54. Given noted that Patrick Thomas had "personality conflicts with [Roberts] as an outside auditor and as a comptroller. *(Id.* at 33).

Plaintiff disputes 54: Plaintiff disputes as hearsay under FRE 802. The Court should discount this testimony as hearsay under FRE 802, as no documentation was produced during discovery of any such complaints in response to Plaintiff's Interrogatory 10:
"Please identify all employee complaints of sexual harassment received by defendant (during the relevant time period) and state:

a. The name, title and sex of each employee who was the basis of the complaint;

b. The name, title and sex of the employees making the complaint;

c. The acts or circumstances of each complaint;

d. The date(s) of these acts or circumstances;

e. The action taken by the employer in response to each complaint;

f. The name, title and sex of the person responsible for investigating each complaint;

g. Management' response to each complaint."

Defendant did not produce any such documentation in response to Plaintiff's production request: "PRODUCTION REQUEST NO. 10: All documents related to allegations of discrimination by the Defendant Nathaniel Roberts, Jr. made by employees, customers, vendors or others."

Defendant's Material Fact 55: Givens stated that Roberts "has got loud before for some reason or another" with him. *(Id.* at 58)

Plaintiff disputes 55: Givens went on to testify that on those occasions where Roberts might have gotten loud, he did not conclude Roberts were trying to humiliate him. (Givens Dep., p.59, L1-5).

Defendant's Material Fact 56: Givens stated that Roberts has "repeated a question to [Givens] more than once" and that Roberts "does that a lot." *(Id.* at 61.)

Plaintiff disputes 56: Givens went on to testify that he didn't see Roberts repeating questions as being demeaning to him. (Givens Dep., p.61, L24-p. 62,L8).

Defendant's Material Fact 57: Young noted that Roberts could "exhibit[] a hard militaristic style" of management which, at times, "didn't give the mutual respect required." (Young Dep., p. 94).

Plaintiff disputes 57: Plaintiff disputes the implication that Roberts' "hard militaristic style" was used in the same manner with female and male employees: see Plaintiff's response to Defendant's Material Fact 30.

Defendant's Material Fact 58: Young discharged Roberts in November 2002 based, among other things, on Roberts' failure to participate in required employee assistance training to correct his management style and the

way he talked to people. (Young Dep., pp. 61, 93-95, 179-180).

Plaintiff disputes 58: Plaintiff disputes the implication that Young and CAU took immediate and reasonable steps to stop Roberts' abusive and harassing conduct toward female employees in general and Holliman in particular. See Plaintiff's response to Defendant's Material Fact 30 and Plaintiff's response to Defendant's Material Fact 26.

Defendant's Material Fact 59: Roberts was not well liked by anyone at the University, male or female. (Ellis Dep., p. 77).

Plaintiff disputes 59: Plaintiff disputes the implication that Roberts didn't know to get along with people; Roberts made choices of who he wanted to berate. See Plaintiff's response to Defendant's material Fact 30: (p) Darayl Givens, (q) Bradley T. Goldsby, (r) Malvern G. Edwards, and (s)Freddie Greer, Jr..

Defendant's Material Fact 60: Paula Barnes, a female accountant at CAU, attributed Roberts' discourteous treatment to the fact that she was subordinate employee and that Roberts "was just a mean, nasty person. (Barnes Dep., pp. 16-17).

Plaintiff disputes 60: Roberts' low attitude of women still came through in the type of assignments he gave Barnes; she testified he gave her a "clerical-type assignment":

"What was disturbing to me was the way he would give me the assignments . . . It was the way that he would talk. . . . He was rude, abrasive. He didn't treat me as a professional on an equal level, and which I considered us to be. I had just as much experience as he did. He just kind talked in a condescending way to me."

(Barnes Dep., p. 11,L8-20)

61. It never crossed Barnes' mind that had anything to do with "a male/female thing." *(Id.* at 17).

Plaintiff disputes 61: See Plaintiff's response to Defendant's Material Fact 60.

Defendant's Material Fact 62: With respect to Roberts' abrasive management style, Givens concluded that "that's [Roberts'] personality. He's just one of those - that's just the way he did business." (Givens Dep., p. 59).

Plaintiff disputes 62: Plaintiff incorporates her responses to Defendant's Material Facts 55-56. Plaintiff incorporates Plaintiff's response to Defendant Material Fact 30 that shows it was not business as usual for female employees, for they felt demeaned and humiliated.

Defendant's Material Fact 63: Plaintiff alleges that during a staff meeting on December 13, 2001, Roberts responded to Plaintiff's concerns that she and co-worker Annette (Sullen) Ogletree were performing the workload of four staff persons by stating in a "harsh tone" that regardless of whatever workload they had, he expected them to complete the work on the 1099 forms by the January 31, 2001 deadline. (Holliman Dep., pp. 142-43).

Plaintiff disputes 63: Plaintiff incorporates its response to Defendant's Material Fact 30 that shows Holliman and other female employees were complaining about the manner in which Roberts communicated, not the nature of the work.

Defendant's Material Fact 64: Plaintiff claims that Roberts stated: "I don't care about the workload, how many people it take. These 1099s got to be out by January 31st and that's what I'm expecting, them out by January 31St,. nothing else. *(Id.* at 143).

Plaintiff disputes 64: Plaintiff incorporates its response to Defendant's Material Fact 30 that shows Holliman and other female employees were complaining

about the manner in which Roberts communicated, not the nature of the work.

Defendant's Material Fact 65: Plaintiff testified that Roberts approached her on December 20, 2000, to inquire about the status of the 1099s, and Plaintiff stated that she and Ms. Ogletree had not had time to work on the project because there were only two of them and there were various other day-to-day duties, including processing payment checks to vendors, which had to be completed prior to the department breaking for the holidays. *(Id.-at* 149).

Plaintiff disputes 65: Plaintiff incorporates its response to Defendant's Material Fact 30 that shows Holliman and other female employees were complaining about the manner in which Roberts communicated, not the nature of the work. Plaintiff further describes Roberts' conduct: "On Dec. 21, 2000 Mr. Roberts came to me with a crazy look on his face and he was frowning and asked me to come into his office. The look he had scared me, like he was going to attack me." See Plaintiff's Aff. ¶ 50. "Mr. Roberts expressed no concern about our overworked situation and spoke to me with a gloss in his eyes, like a wild animal glaring at me, and in a very harsh and abrasive tone he, "I expect you to adhere to my deadline." *(Id.).*

Defendant's Material Fact 66: Plaintiff asserts that, in response, Roberts "said something to the effect of, if you can't do your job, then maybe we need to get somebody to do it."

Plaintiff disputes 66: Plaintiff incorporates her response to Defendant's material Fact 65 above.

Defendant's Material Fact 67: Plaintiff accuses Roberts of "nitpicking" because he would come by her desk, pick up items that were in her work tray, examine them and put them back down. *(Id.* at 151).

Plaintiff disputes 67: Plaintiff incorporates its response to Defendant's Material Fact 30 that shows

Holliman and other female employees were complaining about the manner in which Roberts communicated, not the nature of the work. Plaintiff states, "At least once a week Mr. Roberts would stopped (sic) by my desk, take papers out of the trays on my desk with a disgusted look on his face and throw the papers back into my tray and then walk away." See Plaintiff's Aff., ¶ 47.

Defendant's Material Fact 68: According to Plaintiff, Roberts' actions were "intimidating" because she would be wondering "what is it in particular he [is] looking for" and she therefore surmised that he was just trying to illustrate to her that he had "authority." *(Id.* at 152).

Plaintiff disputes 68: Plaintiff incorporates her response to Defendant's Material Fact 67 above.

Defendant's Material Fact 69: Plaintiff met with Roberts on January 11, 2001, regarding the 1099s and she assured him that she and Ms. Ogletree were working diligently to meet the January 31St deadline, including working during their lunch hour and staying late, but that Roberts was still "rude and intimidating." *(Id.* at 154).

Plaintiff disputes 69: Plaintiff incorporates its response to Defendant's Material Fact 30 that shows Holliman and other female employees were complaining about the manner in which Roberts communicated, not the nature of the work. Plaintiff states that on January 11, 2001, Roberts had that "awful disgusting look on his face" and "he stared at me with this frightening frown on his face and said to me in his rude, very intimidating tone, 'You are dismissed.'" See Plaintiff's Aff. ¶ 52.

Defendant's Material Fact 70: Plaintiff characterized Roberts conduct as follows: "He was rude, still raising his voice. He was intimidating about he - t didn't matter that we were working to 6:00 or 7:00. We were not doing enough. It was not, enough for him. And he wanted to see more - basically, he was almost at the point to like quit your

everyday work and do this, because this is what I want done." *(Id.* at 154).

Plaintiff disputes 70: Plaintiff incorporates its response to Defendant's Material Fact 30 that shows Holliman and other female employees were complaining about the manner in which Roberts communicated, not the nature of the work. See Plaintiff's Aff., ¶ 52: "I left feeling like he really wanted to physically hurt me. Even though I was working those extra hours it was not enough for Mr. Roberts."

Defendant's Material Fact 71: Plaintiff could not recall the specific content of the January 11, 2001 conversation with Roberts. *(Id.* at 154-55).

Plaintiff disputes 71: Plaintiff testified she could not recall that one right at this time. See Plaintiff's Aff. ¶ 52 for Plaintiff's recall of January 11, 2001.

Defendant's Material Fact 72: Plaintiff related an alleged incident, purported to have occurred on January 23, 2001, as she was leaving the office for the day, involving Roberts and General Accounting employee Saba Tesfamariam, in which the employee "was trying to explain [something] to him and he wasn't understanding." *(Id.* at 155).

Plaintiff disputes 72: Plaintiff incorporates its response to Defendant's Material Fact 30 that shows Holliman and other female employees were complaining about the manner in which Roberts communicated, not the nature of the work. See also Plaintiff's Aff., ¶ 54: "I observed Mr. Roberts talking to Saba in a rude, disrespectful and intimidating tone. He was in Saba's face and then he started to pace back and forth in the accounting area with his fingers to his head, frown on his face and a crazy glare look in his eyes, stating "let me see how I can make you understand water and steam makes electric."

Defendant's Material Fact 73: Plaintiff claims that Roberts was pacing the area with his finger to his head saying: "Let me see how to make you understand water and steam make electricity." (Id.).

Plaintiff disputes 73: Plaintiff incorporates her response to Defendant's Material Fact 72 above.

Defendant's Material Fact 74: Plaintiff felt that Roberts was intimidating the employee in front of other people and she decided to walk away because she "refused to stand there and just see him intimidate Saba." (Id.).

Plaintiff disputes 74: Plaintiff incorporates her response to Defendant's Material Fact 72 above.

Defendant's Material Fact 75: February 14, 2001, Roberts overheard her speaking with a co-worker about going to see Bobby Young, the Vice President of Finance (Roberts' direct supervisor), about an outside vendor who apparently had complained that Plaintiff had not returned a telephone call and that Roberts then "called [Plaintiff] into his office, and he start [sic] shouting, `You don't go to Mr. Bobby Young and talk about anything. You do not talk to Mr. Young at all about nothing. Do I make myself clear? You are not supposed to ever go to Mr.. Young's office.'" *(Id.* at 135, 15,6).

Plaintiff disputes 75: Plaintiff incorporates its response to Defendant's Material Fact 30 that shows Holliman and other female employees were complaining about the manner in which Roberts communicated, not the nature of the work. See also Plaintiff's Aff., ¶ 55: "I was afraid to go into his office after hearing that tone. Mr. Roberts asked me to shut his door. Mr. Roberts rose up from his desk and he had this deranged look on his face and in his harsh and demeaning, hateful tone, he told me, speaking his words slowly, that "under no circumstances to you talk to Mr. Young about anything and I mean anything."

Defendant's Material Fact 76: Plaintiff contends that on February 20, 2001, Roberts asked Plaintiff a question about a vendor and when she did not know the answer, Roberts suggested that she find the answer. *(Id.* at 157).

Plaintiff disputes 76: Plaintiff incorporates its response to Defendant's Material Fact 30 that shows Holliman and other female employees were complaining about the manner in which Roberts communicated, not the nature of the work. See also Plaintiff's Aff., ¶ 57.

77. According to Plaintiff, when she returned to Roberts' office with the answer, he was not there, so she tried to be "proactive" by calling the department herself and Roberts subsequently chastised her by stating: "Do only what I ask you to do. Take nothing upon yourself." (Id.).

Defendant's Material Fact 78: On March 1, 2001, Roberts approached Plaintiff desk ask about some misfiled payment invoices and the following exchange ensued:

A: When he first came out, he came into the [Accounts Payable] area, he approached my desk, and he said, "What is this?"

A: And he then - that's when he asked me is AT&T - well, he said out loud like he was talking to the whole office, "Is AT&T and AT&T Broadband, are they the same company?" I said, "No, they're not."

He said, "Well, they're filed together. And I was trying to explain to him that was not aware that they were in the same folder, that they were applied by mistake from a previous employe[e]. I said, "Ms. Davis she probably didn't realize she just lumped all AT&T together."

He wouldn't let me finish explaining, and he start shouting, "Just get this matter correct. Take care of it now.

(Id. at 117-119).

Plaintiff disputes 78: Plaintiff incorporates its response to Defendant's Material Fact 30 that shows Holliman and other female employees were complaining

about the manner in which Roberts communicated, not the nature of the work. See also Plaintiff's Aff., ¶ 58: "He threw the files toward me, in a disdainful way, and they landed on my desk" and Roberts was talking in an intimidating manner and "Mr. Roberts had the look of someone who was crazy, and in this disrespectful tone, he said to me that it was a yes or no question and he wasn't concern with the rest."

Defendant's Material Fact 79: Plaintiff states that Roberts then focused his attention on a missing cable bill: A: He asked me had I seen the cable bill, I think it was for the library. I replied to him that Phyllis McCrary gets the bills, and from Phyllis McCrary then it comes to our office.

He said, "You need to be talking about the AT&T Broadband." I said, "I'm talking about the same thing. I said, "I'm trying to explain to you -

"Have you seen it or not? It' a yes or no answer." I said, "No."

(Id. at 119-120).

Plaintiff disputes 79: Plaintiff incorporates its response to Defendant's Material Fact 30 that shows Holliman and other female employees were complaining about the manner in which Roberts communicated, not the nature of the work. See also Plaintiff's Aff., ¶ 58: "He threw the files toward me, in a disdainful way, and they landed on my desk" and Roberts was talking in an intimidating manner and "Mr. Roberts had the look of someone who was crazy, and in this disrespectful tone, he said to me that it was a yes or no question and he wasn't concern with the rest."

Defendant's Material Fact 80: Plaintiff contends that this entire episode was embarrassing for her because it happened in front of her co-workers and she felt that Roberts was "belittling" and "intimidating" her. *(Id.* at 120).

Plaintiff disputes 80: Plaintiff incorporates its response to Defendant's Material Fact 30 that shows Holliman and other female employees were complaining about the manner in which Roberts communicated, not the nature of the work. See also Plaintiff's Aff., ¶ 58: "He threw the files toward me, in a disdainful way, and they landed on my desk" and Roberts was talking in an intimidating manner and "Mr. Roberts had the look of someone who was crazy, and in this disrespectful tone, he said to me that it was a yes or no question and he wasn't concern with the rest."

Defendant's Material Fact 81: Plaintiff recounts an alleged incident, purported to have occurred at some undetermined point after March 15, 2001, in which she was looking for a particular purchase order and she asked Roberts' assistant, Melba Carmichael, if she had seen the purchase order. *(Id.* at 132).

Plaintiff admits 81: Plaintiff incorporates its response to Defendant's Material Fact 30 that shows Holliman and other female employees were complaining about the manner in which Roberts communicated, not the nature of the work. See also Plaintiff's Aff., ¶ 60.

Defendant's Material Fact 82: Plaintiff claims that Roberts "overheard me, and he come [sic] storming out of his office. And he started screaming at me, and he got pretty close up on me. `Do you know what it takes to get a purchase order paid?'" (Id.).

Plaintiff disputes 82: Plaintiff incorporates its response to Defendant's Material Fact 30 that shows Holliman and other female employees were complaining about the manner in which Roberts communicated, not the nature of the work. See also Plaintiff's Aff., ¶ 60: "he overhead me and came out of his office shouting in an extremely aggressive tone and pointing at the purchase order and then clinched his fist and pointed his index finger

toward my face, he was so close upon me I thought that he was going to poke me in my face. Mr. Roberts had this crazy looked (sic) on his face and he was yelling to me 'do you even know the procedures for paying a purchase order?"

Defendant's Material Fact 83: Plaintiff asserts that Roberts then began explaining to her how to pay a purchase order and that he "went and got purchase order and start beating it, `These are the steps to getting a purchase order paid.'" (Id.).

Plaintiff disputes 83: Plaintift incorporates her response to Defendant's Material Fact 82 above. "[B]ut it was obvious that Mr. Roberts did not know the process because he was wrong in the procedures he was informing me on, but I was too scared to correct him. He humiliated me in front of Ms. Carmichael and I felt so belittled that I went to the bathroom and cried." See also Plaintiff's Aff., ¶ 60:

Defendant's Material Fact 84: Plaintiff claims that she remembers feeling so "humiliated" in front of Ms. Carmichael that she went "running off to cry. *(Id.* at 133).

Plaintiff disputes 84: Plaintiff disputes the implication that she overreacted or was being too sensitive. Plaintiff incorporates her response to Defendant's Material Fact 83 above.

Defendant's Material Fact 85: Plaintiff asserts that on May 29, 2001, she went to Roberts office and attempted to write some information on the back of a check, and Roberts "pulled out a piece of paper, and he went `FOPAL. That's how you write it. Do you understand how to write it?'" (Id. at 133, 158).

Plaintiff disputes 85: Plaintiff incorporates its response to Defendant's Material Fact 30 that shows Holliman and other female employees were complaining

about the manner in which Roberts communicated, not the nature of the work. See also Plaintiff's Aff., ¶ 73: "He talked to me with a civil tongue, but he still had this look of disgust on his face. . . . When I returned to Mr. Roberts's office his attitude changed. When I walked into the office he had that deranged look in his eyes and his tone was harsh and abrasive, making me scared. . . . Mr. Roberts started shouting to me with his abrasive tone, and intimidating me and he pulled out piece of paper and wrote FOAPAL, shouting "this is how you write," beating on his desk . . . As he was shouting each letter to me spit was coming out of his mouth on to me. When I left his office I was scared and humiliated. I went to the bathroom to cry. I remember crying and saying I just wanted Mr. Roberts to leave me along and feeling that Mr. Young or HR had not tried to resolve these issues."

Defendant's Material Fact 86: The acronym that Roberts referred to was "FOAPAL" and it related to providing the following detailed information: F = Fund; 0 = Origin; A = Account; P = Program; and A = Activity. (Holliman Dep. Exh. 8).

Plaintiff disputes 86: Plaintiff incorporates her response to Defendant's Material Fact 85 above.

Defendant Material Fact 87: Plaintiff contends that on June 19, 2001, Roberts allegedly chastised her upon learning that she previously (i.e., in May 2000) had discussed her leave of absence request with the Human Resources department. *(Id.* at 259).

Plaintiff disputes 87: Plaintiff incorporates its response to Defendant's Material Fact 30 that shows Holliman and other female employees were complaining about the manner in which Roberts communicated, not the nature of the work. See also Plaintiff's Aff., ¶ 75: "Mr. Roberts shouted to me 'you talked to her about your leave'. I informed him that it was my right to talk to HR about my

leave. He stated to me that I was going over my manager's head, and I replied that my manager was fully aware that I was going to HR to check the balance of my leave. He repeated again in his harsh, demeaning tone that maybe he might be wrong, but if he is, then he just is wrong and that I do not talk to anybody in HR about anything and that I should come to him and him only."

Defendant's Material Fact 88: According to Plaintiff, Roberts told her that she was not to go to HR and that she should have addressed the leave request with her manager and him. (Id.).

Plaintiff disputes 88: Plaintiff incorporates her response to Defendant's Material Fact 87 above.

Defendant's Material Fact: Plaintiff replied that as her right to talk to HR about her leave and that her manager (Richard McLemore) was

Plaintiff disputes 89: Plaintiff incorporates her response to Defendant's Material Fact 87 above.

Defendant's Material Fact 90: Plaintiff asserts that Roberts stated, "I might be wrong, but then i'll just be wrong." (Id.).

Plaintiff disputes 90: Plaintiff incorporates her response to Defendant's Material Fact 87 above.

Defendant's Material Fact 91: Plaintiff refers to an amended charge in her Complaint. (Compl. 91 6).

Plaintiff admits 91.

Defendant's Material Fact 92: The EEOC issued a "cause" determination with respect to Plaintiff Plaintiff's EEOC charge on March 15, 2002. (Holliman Dep., p. 204-205; Hall Dep., Exh. 11).

Plaintiff admits 92:

93. Plaintiff prepared a letter dated May 2, 2002, during the conciliation stage of the EEOC process, nearly two (2) months after the Commission had already issued its

"cause" determination with respect to her original charge. (Holliman Dep., pp. 263-264; Holliman Dep., Exh. 18)

Plaintiff admits 93.

94. Plaintiff admits that the reason she wrote the May 2, 2002 letter was, because the EEOC investigator called "and asked me put together what feel might would be fair settlement." (Holliman Dep., p. 269).

Plaintiff disputes 94: Plaintiff disputes the implication that she indicated in the May 2, 2002 letter all of remedies and damages that she would be entitled to under applicable law.

Defendant's Material Fact 95: Plaintiff contends that some of her job duties were taken away and assigned to another employee. (Holliman Dep., p. 208).

Plaintiff admits 95.

Defendant Material Fact 96: Plaintiff admits that McLemore told her that he was reassigning some of her duties "so that way it would keep Mr. Roberts off of [her] back." (Holliman Dep., pp. 210-211).

Plaintiff disputes 96: Plaintiff disputes the implication that she agreed with McLemore taking her duties from her in order to keep Roberts off her back. See Plaintiff's Aff., ¶ 86: "Ms. Sullen-Ogletree testified to that in her deposition that Mr. McLemore gave her some of my assignments, but she wasn't totally honest, because by the time I left on April 24, 2002 Ms. Sullen was doing almost all of my job duties. It was becoming clear to me that eventually I would be pushed out or fired."

Defendant's Material Fact 97: Plaintiff wanted to receive more computer training on the new Banner software. (Holliman Dep., p. 297).

Plaintiff disputes 97: Plaintiff disputes the implication that additional Banner training was unnecessary for her to perform her supervisory duties. See Plaintiff's Aff., ¶ 46. McLemore implied in his testimony that because

Ogletree already "has an extensive knowledge and in-dept of the Banner software" was the justification for not allowing Holliman to obtain further training in her as Accounts Payable supervisor. Roberts testified that he was not aware of Holliman wanting to receive additional Banner training after she returned from her medical leave. (McLemore Dep. P. 39, L19-p.40, L5). McLemore testified that Holliman was receiving "sort of an on-the-job training situation" with Ogletree for a couple of days and then after that "a question/answer type situation when a specific problem came up." (*Id. at* P. 63, L18-p.64, L4). Holliman felt it was important to her function as a supervisor to have more in-depth training. (Plaintiff's Aff. ¶ 46). Roberts testified: "However, Banner training was alwlays available, and it was there for her. All she had to do was go to the class. . . . If I may, the university offered continuous training on the Banner system, continuous training year around. If Ms. Holliman wanted to be trained on the Banner system, I see no reason why it was not available for her. So she would not have to make a specific request of me or even a specific request of Mr. McLemore to be able to attend Banner training. The university made it available for everyone." (Roberts dep. P. 268-269).

Defendant's Material Fact 98: Plaintiff claims that Roberts started staring at Plaintiff as he walked past her desk on his way to his office. (Holliman Dep., p. 205).

Plaintiff disputes 98: Plaintiff incorporates its response to Defendant's Material Fact 30 that shows Holliman and other female employees were complaining about the manner in which Roberts communicated. See Plaintiff's Aff. ¶ 59: "There were times that he would just stand in the doorway and stared at me with hatred in his and then he would slam the door." McLemore drew a diagram of office arrangement that reveals a blind spot section where Roberts could walk out and be seen by Holliman but

not by the other staff members in her area. See Plaintiff's Exhibits 1-3 to McLemore's Dep. and Defendant's Exhibit 1 to same: Ogletree's blind spot, (McLemore Dep., p. 30, L1-19); Holliman could see immediately when Roberts walked in and out of the office, (McLemore Dep., p. 30, L20-p. 31, L2); a person could stop at a point and neither Ogletree or Belt could see, (McLemore Dep., p. 31, L3-9).

99. Plaintiff states that Roberts stopped speaking to Plaintiff. (Holliman Dep., p. 205).

Plaintiff disputes 99: Plaintiff disputes the implication that Roberts' harassing and abusive conduct stopped after Holliman filed her internal complaint with HR or with her EEOC charge filed later. Carmichael testified Roberts told her that Holliman filed a complaint with human resources. (Carmichael Dep., 102, L11-18) Carmichael observed Roberts' attitude toward Holliman changed around the time Roberts told Carmichael about Holliman filing a complaint with HR. *(Id. at p. 102,L19-21)*. Carmichael observed Roberts' more negative attitude toward Holliman lasted until Holliman left CAU. *(Id. at p. 102,L22-25 AND P. 105,l1-9)*. Also see Plaintiff's Aff. ¶¶ 71-72.

Defendant's Material Fact 100: Plaintiff contends that she no longer directed the work flow in the Accounts Payable department. (Holliman Dep., p. 205).

Plaintiff disputes 100: Plaintiff incorporates her response to Defendant's Material Fact 96.

Defendant's Material Fact 101: Plaintiff asserts that she no longer ran certain reports at the end of the month. (Holliman Dep., p. 209).

Plaintiff disputes 101: Plaintiff incorporates her response to Defendant's Material Fact 96.

102. Plaintiff was excused from working extra hours during a busy time of year. (Holliman Dep., p. 214).

Plaintiff disputes 102: Plaintiff disputes the implication that she requested to be relieve from working extra hours. Holliman stated she could come to work at 8:30 a.m. and work half of her lunch hour and that would be the extra hours Roberts wanted employees to work and Roberts agreed to this arrangement. (Plaintiff's Aff. ¶ 81). Roberts later changed his mind after overhearing a conversation between Plaintiff and McLemore. *(Id.* at ¶ 82*).*

Defendant's Material Fact 103: Plaintiff was required to fill out a leave slip when reporting back to work from a doctor's appointment. (Holliman Dep., pp. 214-215).

Plaintiff disputes 103: Roberts started changing the terms and conditions of employment to harass and/or retaliate against Plaintiff. A few times, Holliman was sick and had to go to the doctor. When she would come in, Roberts would demand a doctor excuse and require Holliman to fill out forms for absenteeism even though Holliman was in compliance with CAU policy. (*Id. at* P.34,L18-p.35L23). Carmichael observed it seemed Roberts was trying to keep record on just about everything Holliman did. *(Id. at p.37).* To her knowledge, Carmichael never heard Roberts ask McLemore to report on Ogletree or Womble. (*Id. at* P.38, L18-24). She observed Roberts started this process of watching Holliman after she went to Bobby Young about Roberts's conduct. (*Id. at* P.38, L25-p.39L25). Carmichael first observed Roberts displaying a negative attitude toward Holliman around Spring of 2000 until Holliman went on medical leave the next year. (*Id. at* P.40,L12-25). Roberts did not require Carmichael to keep track of any of the male employees in grants and contracts. (*Id. at* P.43,L6-10). See also Plaintiff's Aff. ¶ 75. See also (McLemore's Declaration, ¶ 5).

104. Plaintiff was not satisfied with her 2001 performance evaluation score. (Holliman Dep. p. 215).

Plaintiff disputes 104: McLemore implied to Holliman that his hands were tied by Roberts and that he could not change some the areas that should have been changed. See Plaintiff's Aff. ¶ 80. McLemore make clear in his Declaration that Roberts would instruct him through use of memos to reprimand Mrs. Holliman on several occasions. (McLemore's Declaration, ¶ 4,).

Defendant's Material Fact 105: Plaintiff admits that she never discussed her EEOC charge with Roberts nor did she ever inform him that she had filed such a charge. (Holliman Dep., pp. 173-74).

Plaintiff disputes 105: Plaintiff incorporates her response to Defendant's Material Fact 30 that shows Holliman and other female employees were complaining about the manner in which Roberts communicated, not the nature of the work. Plaintiff incorporates her response to Defendant's Material Fact 26. It was Young's responsibility as the Department Head to create "an atmosphere free of discrimination and harassment, sexual or otherwise, and for dissemination and implementation of this policy within/his/her area of responsibility. These individuals are also responsible for referring reported incidents of sexual harassment to Human Resources." See Plaintiff's Exhibit 1 to Young's Dep. At Bates Number CAU 000443, Subsection "Responsibilities" b.

Defendant's Material Fact 106: Roberts confirmed that he first became aware Plaintiff's EEOC charge on July 15, 2002. (Roberts Dep., 137).

Plaintiff disputes 106: Carmichael testified Roberts speculated about whether Holliman had filed a complaint with EEOC. (*Id. at* P.165,L21-p.166L3). Roberts later mentioned to Carmichael that he had received some information from human resources in regard to Holliman's EEOC complaint: he said based on his conversation with

Ms. Lytle, he believed Holliman filed a complaint with EEOC. (*Id. at* P.166,L4-25).

Defendant's Material Fact 107: Plaintiff has no evidence that Roberts knew anything about her EEOC charge prior to July 15, 2002.. (Holliman Dep., p. 288).

Plaintiff disputes 107: Plaintiff incorporates her response to Defendant's Material Fact 106 above.

Defendant's Material Fact 108: Plaintiff admits that she did not have any problems with Roberts prior to December 2000. (Holliman Dep., pp.75-79).

Plaintiff disputes 108: Plaintiff disputes the implication that Roberts did not display inappropriate and/or abusive conduct toward Plaintiff prior to December 2000. See Plaintiff's Aff. ¶ 15-17.

RULE 7.1D CERTIFICATION

I hereby certify that this document has been prepared by using one of the font and point selections (i.e., Courier New 12 point) approved by the Court in Local Rule 5.1B.

Dated this 2nd day of August 2004.

Respectfully submitted,

s/Sandra Jackson Sheppard
Attorney & Counselor at law

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

EULICE M. HOLLIMAN,
Plaintiff,
v.
CLARK ATLANTA UNIVERSITY, INC., and NATHANIEL ROBERTS, JR.,
Defendants.

CIVIL ACTION NO.
1:03-CV-0132-JEC

Plaintiff asks the Court to reconsider the Magistrate Judge's Final Report and Recommendation and files these objections, as authorized by Federal Rule of Civil Procedure 72(b):

A. Introduction

1. Plaintiff is Eulice M. Holliman; Defendant is Clark Atlanta University, Inc., and Nathaniel Roberts, Jr..

2. Plaintiff sued Defendants for sexual harassment and state law claims.

3. On February 3, 2005, the United States Magistrate Judge Linda T. Walker filed the Magistrate Judge's Final Report and Recommendation with respect to Defendants' motion for summary judgment.

4. Magistrate Judge Walker ruled on the motion on February 3, 2005, and granted the motions for summary judgment.

5. Plaintiff files these objections to the Magistrate Judge's final report and recommendation.

B. Argument

6. If a party timely objects to the magistrate judge's recommendations or findings, the district court must make a de novo determination of the objectionable portions of the magistrate judge's recommendations or findings. 28 U.S.C. § 636(B)(1); Fed. R. Civ. P. 72(b). The district court may then accept, reject, or modify, in whole or in part, the recommendations or findings. 28 U.S.C. § 636(B)(1); Fed.

R. Civ. P. 72(b).

7. Plaintiff objects to the Magistrate Judge's recommendations/proposed findings of fact for the following reasons:

Error 1: Magistrate Judge's states that "All facts taken from the Defendants' Statement of Material Facts remain undisputed." (MJFRAR, Footnote 2, pg. 4).

Sub-Error 2: Magistrate Judge finding that Plaintiff complaints about Roberts should be limited to the time frame beginning December 2000 omits relevant facts from Plaintiff's deposition testimony concerning an incident that occurred around August of 1998, about a month after Defendant Roberts became comptroller.
(Pl. Dep. pp. 72-3, Ex. 6). Plaintiff's affidavit did not contradict her deposition testimony. Plaintiff's affidavit did no more than explained in more detail Defendant Roberts' demeanor and attitude, the manner in which Defendant Roberts treated her. The deposition question asked Plaintiff to describe her working relationship with Defendant Roberts before December 2000. (Pl. Dep. pp. 72-3, Ex. 6). A genuine issue of material fact is whether Defendant Roberts treated Plaintiff in an abusive or demeaning manner by talking to her in way that he did not generally talk to male employees. A reasonable jury can infer Plaintiff was testifying about a demeaning and hostile attitude coming from Defendant Roberts early on in his tenure at the university, when she said "he was a Dr. Jekyll and Mr. Hyde." The court in Van T. Junkins and Assocs., Inc. referred to earlier Eleventh Circuit precedent, Kennett-Murray Corp. v. Bone, 622 F.2d 887 (5th Cir.1980), that "held that a genuine issue can exist by virtue of a party's affidavit, even if it conflicts with his deposition. There the court found that Bone's affidavit explained certain aspects of his deposition testimony and clarified certain ambiguities created by frequent shifts in the questioning of Bone about

a promissory note and the employment contract." See Van T. Junkins and Assocs., Inc., 736 F.2d 656, 658 (11th Cir. 1984). The Magistrate Judge also noted in Footnote 3 that much of Plaintiff's affidavit is problematic in that it contains hearsay. However, the Eleventh Circuit in Pritchard v. Southern Co. Services, 92 F.3d 1130, 1135 (11th Cir. 1996) held that inadmissable hearsay can be used to defeat summary judgment when that hearsay will be reducible to admissible form at trial. Plaintiff relates information that she received directly from other CAU staff and most of the staff, or some other live person, she refers to have given their deposition and if not unavailable, would be able to testify at trial.

Sub-Error 3: Magistrate Judge erred in finding that "Plaintiff attempts to dispute this fact [the harsh tone] by changing her prior deposition testimony through her subsequent affidavit." (MJFRAR, Footnote 4, p. 7) and (Pl. Aff. ¶ 50). Defendant counsel's deposition question asked Plaintiff to explain, "when you say harsh tone, what do you mean?" (Pl. Dep. p. 143). Plaintiff testified that Roberts told her, "I don't care about the worklaod, how many people it take. These 1099s got be out by January 31st, and that's what I'm expecting, them out January 31st, nothing else." (Pl. Dep. p. 143). In her affidavit, Plaintiff clarified Robert's demeanor when she described the way he looked: "Mr. Roberts came to me with a crazy look on his face and he was frowning and asked me to come in his office. The look he had scared me, like he was going to attack me. Mr. Roberts inquired about the 1099's . . .Mr. Roberts expressed no concern about our overworked situation and spoke to me with a gloss in his eye, like a wild animal glaring at me, and in a very harsh and abrasive tone he said, 'I expect you to adhere to my deadline.' When I left his office I was so puzzled because I had never seen that look on his face before and I was scared and felt very stress [sic]

by his look and attitude toward me." (Pl. Aff. ¶ 50). Other fact witnesses observed Defendant Robert's demeanor and attitude toward Plaintiff: "I've notice him talking to Ms. Holliman – I had noticed him talking to Ms. Holliman in an intimidating and infuriating manner, as if he thought she could'nt think, she didn't – that she was stupid and just the manner in which he talked to her." (Carmichael Dep. pp. 32-3). See Holifield v. Reno, 115 F.3d 1555, 1558 (11th Cir. 1997)(where Holifield experienced "significant difficulty in maintaining a professional demeanor when it comes to verbally communicating with subordinates, peers and supervisors) and Morris v. Crow, 117 F.3d 449, 452 (11th Cir. 1997) (where witness explains demeanor and attitude showed hostility and unprofessional attitude).

Sub-Error 4: Magistrate Judge's finding limited the issue of "nitpicking" by Defendant Roberts to one type of activity, "Defendant Roberts would 'nitpick' at Plaintiff by coming by her desk, picking up items in her work tray and putting them back, which intimidated Plaintiff . . ." (MJFRAR, p. 8). Plaintiff's co-worker Ogletree was in a position to observe firsthand Defendant Roberts' nitpicking conduct: "he was out front, . . . asking her the same question over and over and over. And you could see if he was maybe harassing her in a way. And so after she wouldn't break down and cry in front of him, but after he would leave, she would break down and cry or go to the restroom and cry." (Oglegree Dep. p. 35-6). Fact witness Richard McLemore, Plaintiff's immediate supervisor, testified that he confronted Roberts about Plaintiff's complaints, "I told him I would appreciate it if he would come to me if head some information he needed and let me go from there with the situation, and he [Roberts] said he would work with me on that," (McLemore Dep. p. 83), but Roberts didn't keep his word and resumed going to Plaintiff

and causing Plaintiff to bring more complaints to McLemore. (McLemore Dep. p. 83). McLemore further testified that neither Ogletree or Michael Womble, Plaintiff's other coworker, came to him complaining about Roberts. (McLemore Dep. p. 86). McLemore clarified his deposition in his declaration dated June 3, 2004, [which Plaintiff believes Magistrate Judge erroneously ruled stricken pursuant to Rules 26 and 37 (c) of the Federal Rules of Civil Procedure as well as Van T. Junkins and Assocs., Inc., 736 F.2d 656, 658 (11th Cir. 1984)] in which McLemore delineated more clearly his observations of Roberts' conduct toward female employees in general and toward Plaintiff in particular. Therefore, a genuine issue of material fact exists on whether Defendant Roberts was "nitpicking" or "targeting" Plaintiff in a manner different from similarly situated male employees.

Sub-Error 5: Magistrate Judge erred in finding that Defendant Robert's conduct toward Saba Tesfamariam was limited in scope. (MJFRAR p. 9). There is a genuine issue of material fact on whether Defendant Roberts' treatment of subordinate employee Saba Tesfamariam, and her husband Kif, was based on both gender and national origin, because fact witness Pam Pressley testified she recalled observing Roberts' treatment of Saba: "There's a woman, Saba who is Ethiopian, her husband worked in Grants and Contracts, Kif . . . he [Roberts] made her [Saba] tremble; . . . he was just awful to her . . . speaking to her as if she were incompetent, that haughty tone of voice, only more pronounced than haughty even. It was just dripping with sarcasm, body presence closer than you needed to be in order to be respectful, . . . speaking to them [Saba and Kif] in just disrespectful tones. And the things he said were implied that they didn't know what they were doing, that they were incompetent, or they didn't do it in a timely manner or . . . It wasn't worth his [Roberts'] time, that kind

of thing." (Pressley Dep. 13). Defendant Roberts' administrative assistant, Melba Carmichael was in the unique position to daily observe Robert's conduct and observed the he treated Saba: "I have seen him have Saba in tears because of the way he spoke to her." (Carmichael Dep. 28-30).

Sub-Error 6: Regarding the February 14, 2001 incident in which Defendant Roberts called Plaintiff into his office after overhearing her speaking with a co-worker about going to see Mr. Young about an outside vendor who had complained that Plaintiff never returned a telephone call, Magistrate Judge failed to include Defendant Roberts' demeanor and attitude toward Plaintiff, as set forth in Plaintiff's affidavit. See (Pl. Aff. ¶ 55), where Defendant Roberts called Plaintiff on her extension, and "he had such a harsh and aggressive tone in his voice, I was afraid to go into his office after hearing that tone. Mr. Roberts asked me to shut his door. Mr. Roberts rose up from his desk and he had this deranged look on his face and in his harsh and demeaning, hateful tone, he told me, speaking his words slowly, that 'under no circumstances do you talk to Mr. Young about anything and I mean anything and you should only address me,' words to that effect. Mr. Roberts' fist was clinched together and only his index finger was pointing toward my face and shouting at and thrusting his head side by side and shouting 'do you understand, do I make myself clear.' I was scared and felt reduced to nothing, and I answered him yes." (Pl. Aff. ¶ 55).

Sub-Error 7: Regarding incident on February 20, 2001 when Defendant Roberts reprimanded Plaintiff by stating "Do only what I ask you to do. Take nothing upon yourself." (MJFRAR p 10). Magistrate Judge failed to include Defendant Roberts' demeanor and attitude toward Plaintiff, as set forth in Plaintiff's affidavit. See (Pl. Aff. ¶ 57).

Sub-Error 8: Regarding incident on March 1, 2001 when Defendant Roberts approached Plaintiff at her desk to inquire about misfiled payment invoices. (MJFRAR p 10). Magistrate Judge failed to include Defendant Roberts' demeanor and attitude toward Plaintiff, as set forth in Plaintiff's affidavit. See (Pl. Aff. ¶ 58).

Sub-Error 9: Magistrate Judge completely omitted Plaintiff's facts about Defendant Roberts' demeanor and attitude walking all day back and forth from his office where he passed her desk The problem was that there was a blind spot area from the doorway to his office where Plaintiff could see Defendant Roberts but her co-workers could not, and it was in this blind spot area that Plaintiff would observe Defendant Roberts stand in the doorway and stare at her with hatred in is eyes, a deranged look on his face and then slam the door, and on other occasions, Defendant Roberts displayed his hostility openly and Plaintiff's co-worker Michael Womble remarked to Plaintiff, "Ms. Holliman if looks could kill, Mr. Roberts would have just killed you." (Pl. Aff. ¶ 59). Fact witness and Plaintiff's co-worker, Annette Ogletree, testified she recalled hearing Womble make that comment. (Ogletree Dep. p. 76-7).

Sub-Error 10: Regarding Magistrate Judge's Footnote 7, the Judge omitted relevant facts in Plaintiff's disputation of DSMF ¶ 16, where there is a genuine issue of material fact over how the formal complaint resolution procedure was invoked by Plaintiff. Defendant's position is that Plaintiff invoked formal complaint procedure by her typewritten letter dated March 15, 2001 and Plaintiff's position is that she invoked the formal complaint procedure when she followed Step One of the CAU's Complaint Resolution Procedure by going to her immediate supervisor Richard McLemore. Young admitted that by Plaintiff coming to him, as the department head, she was complying

with Step two of CAU's procedure. (See Young Dep., p. 129, Ex. 1 bates 000502).

Sub-Error 11: There is a genuine issue of material fact on whether Plaintiff complained to CAU's HR about harassment based on her gender as a female. Regarding Plaintiff's meeting with Ms. Shockley, CAU's HR personnel, Magistrate Judge omitted pertinent facts about content of meeting as related in Plaintiff's affidavit. Plaintiff told Shockley about Defendant Roberts' attitude toward female employees and how he intimidates them and totally disrespect them. (Pl. Aff. ¶ 67). Defendant did not obtain counter affidavit from Shockley or otherwise rebut the content of the conversation between Plaintiff and Shockley, as required under Fed. R. Civ. P. 56.

Sub-Error 12: There is a genuine of material fact on whether there were other staff, or former staff, with concerns about Defendant Roberts' conduct and out of the other staff, whether female employees' complaints showed Defendant Roberts' treated female employees overall more harshly and demeaning than similarly situated male employees. The Magistrate Judge omits pertinent deposition testimony of other staff and former staff who testified about first hand knowledge of Defendant Roberts' conduct with respect to female and male employees. Plaintiff's disputation of DSMF ¶ 30 points out facts based on deposition testimony and which Defendants did not rebut. The Magistrate Judge attempts to characterize these facts as argument, but these are fact witnesses testifying under oath and subject to cross-examination by opposing counsel. **Females** who testified in deposition: **Joyce Stafford** (PR to DSMF ¶ 30, p. 14); **Terryl Obasanya** (PR to DSMF ¶ 30, p. 15); **Toyah Ellis** (PR to DSMF ¶ 30, p. 16); **Latonia Franklin** (PR to DSMF ¶ 30, p. 18); **Marinetta Blaiock** (PR to DSMF ¶ 30, p. 20); **Paula Barnes** (PR to DSMF ¶ 30, p. 22); **Betty White** (PR to

DSMF ¶ 30, p. 24); **Jacqueline Jackson** (PR to DSMF ¶ 30, p. 24); **Annette Ogletree** (PR to DSMF ¶ 30, p. 25); **Pam Pressley** (PR to DSMF ¶ 30, p. 28); **Melba Carmichael** (PR to DSMF ¶ 30, p. 40). **Males** who testified: **James Clausell**, an outside vendor testified that he forewarned CAU not to hire Defendant Roberts because of previous conflicts between Roberts and CAU's employees Pam Pressley and T. J. Singh. (PR to DSMF ¶ 30, p. 34). **Thomas W. Cole, Jr.**, former president of CAU, testified that before hiring Defendant Roberts he was aware of issues with Roberts' leadership style, that Defendant Roberts didn't have the best people skills. (PR to DSMF ¶ 30, p. 35-6). **Thomas R. Poitier**, formerly held the contropller position before Defendant Roberts, testified about specific incident between LaTanya Franklin and Defendant Roberts. After Franklin came to him in a very emotional state, Poitier testified that he confronted Roberts and recalls Roberts saying, "That damn girl doesn't know what she talking about." (PR to DSMF ¶ 30, p. 36-8). **T. J. Singh**, former supervisory employee over Grants and Contracts from 1984 through 2000 (Singh Dep. p 8), testified that his subordinate might have said Defendant Roberts was pushy, but he didn't think any of his subordinate employees ever came to him crying and saying Roberts treated them in a demeaning manner and he didn't recall any of his employees complaining about Roberts harassing them. (PR to DSMF ¶ 30, p. 38). This is a material fact because the Grants and Contracts department consisted of all men for the majority of the time. (PR to DSMF ¶ 30, p. 17). Singh testified that there were occasions or conflicts with Defendant Roberts where he felt Roberts was demeaning him. (PR to DSMF ¶ 30, p. 38); Melba Carmichael testified Defendant Roberts made negative remarks about Mr. Tesfarmariam and Mr. Singh, both of same Indian nationality. (PR to DSMF ¶ 30, p. 45).

There is a genuine issue of material fact on whether the treatment of these two men had more to do with their nationality than just Defendant Roberts being an equal opportunity abuser, since Singh did not have subordinate male employees complaining about Roberts in the same manner as female employees complained about Roberts. **Robert McLemore** (PR to DSMF ¶ 30, p. 46). **Darayl Givens** (PR to DSMF ¶ 30, p. 51); **Bradley T. Goldsby** (PR to DSMF ¶ 30, p. 51); **Malvern G. Edwards** (PR to DSMF ¶ 30, p. 51); and, **Freddie Greer, Jr.** (PR to DSMF ¶ 30, p. 52).

Sub-Error 13: In Footnote 8, the Magistrate Judge contends that it appears Plaintiff attempts to circumvent Local Rule 7.1 D. the 25-page limitation of summary judgment brief; however, there is no basis for this contention when LR 56.1 B (2) requires the responding party to a summary judgment motion to respond to each of the movant's numbered material facts. There is no page limit placed on this response. With deposition taken of not less than 23 fact witnesses it should be anticipated that there will be an abundance of facts which both parties are entitled to use.

Sub-Error 14: The Magistrate Judge granted Defendants' motion to strike a declaration of Richard McLemore dated June 3, 2004 on an erroneous interpretation of case law and Fed. R. Civ. P. 26(e), Supplementation of Disclosures and Responses. First, Van T. Junkins and Associates, Inc. v. U.S. · · · , 736 F.2d 656, 657 (11th Cir. 1984) itself concerns an affidavit given by a party. Mr. McLemore is not a plaintiff nor a defendant in this lawsuit. A party can offer contradictory evidence. McConville v. Florida Towing Corp., 321 F.2d 162, 165 (5th Cir. 1963), precessor to the Eleventh Circuit. See also Thurber Corp. v. Fairchild Motor Corp., 269 F.2d 841, 845 (5th Cir. 1959)(fact witness is regarded as a relevant

circumstance to be considered by the jury as showing bias or interest).

The Magistrate Judge erred in striking the declaration of Richard McLemore dated June 3, 2004. FRCP 26(e) addresses disclosures and responses to discovery requests, neither of which McLemore's declaration concerns. Plaintiff had no duty under 26(e) to supplement McLemore's deposition testimony, and his declaration could not have been "new evidence" within the contemplation of the Rule. FRE 613, prior statements of witnesses, gives Defendants the right to examine Mr. McLemore during the trial about any perceived discrepancies between his deposition and declaration dated June 3, 2004. Plaintiff properly served the McLemore's declaration with her response to the summary judgment motion under FRCP 56(e).

Sub-Error 15: There is a genuine issue of material fact on whether Defendant Roberts took serious Plaintiff's allegations when his superior Young testified that he did not mention Plaintiff in Roberts job performance review, (Young Dep. p. 175-6), but Young mentioned the situation with Singh, (Young Dep. p. 174); Young admitted that he did not discussed Defendant Roberts with respect to Plaintiff at all during Roberts job performance review, (Young Dep. p. 177-8); Young admitted Defendant Roberts did not follow his instructions as outlined in Roberts performance improvement plan, (Young Dep. p. 177 and 180); Plaintiff never heard anything from Mr. Young or Human Resource after she filed her complaint on March 15, 2001. (Pl. Aff. ¶ 70)

Sub-Error 16: Regarding the March 15, 2001 incident in the presence of Defendant Roberts' assistnat, Melba Carmichael, the Magistrate Judge omitted pertinent facts relating to Defendant Roberts' demeanor and attitude. (Pl. Aff. ¶ 60).

Sub-Error 17: Regarding the May 29, 2001 incident in the presence of Defendant Roberts talking to Plaintiff about a vendor, the Magistrate Judge omitted pertinent facts relating to Defendant Roberts' demeanor and attitude. (Pl. Aff. ¶ 73).

Sub-Error 18: Regarding the June 19, 2001 incident in the presence of Defendant Roberts chastising Plaintiff concerning her going to HR to discuss her leave of absence request, the Magistrate Judge omitted pertinent facts relating to Defendant Roberts' demeanor and attitude. (Pl. Aff. ¶ 75).

Sub-Error 19: The Magistrate Judge omitted pertinent facts that led Plaintiff to file her EEOC Charge and her conversation with fact witness Richard McLemore, her immediate supervisor. (Pl. Aff. ¶ 76).

Sub-Error 20: The Magistrate Judge omitted pertinent facts that occurred in June 2001 where Defendant Roberts approached Plaintiff concerning a utility bill, where Roberts' demeanor and attitude did not change. (Pl. Aff. ¶ 77).

Sub-Error 21: The Magistrate Judge omitted pertinent facts where Plaintiff indicates she contacted EEOC to see if CAU had been notified of her charge because Roberts' conduct toward her had not changed. (Pl. Aff. ¶ 78).

Sub-Error 22: The Magistrate Judge omitted pertinent facts where Defendant Roberts blamed Plaintiff for error caused by McLemore. (Pl. Aff. ¶ 79).

Sub-Error 23: The Magistrate Judge omitted pertinent facts where Plaintiff indicated Defendant Roberts began retaliating against her through her immediate supervisor, McLemore. (Pl. Aff. ¶ ¶ 80-6) and McLemore Dec. dated June 3, 2004.

Sub-error 24: The Magistrate Judge omitted all pertinent facts relating to the effect of stress caused by

Plaintiff's contact with Defendant Roberts had on her health. (Pl. Aff. ¶ ¶ 87-92).

C. Conclusion

Because the Magistrate Judge's recommendation/ proposed findings of fact are erroneous, Plaintiff asks the Court to either reject them and rule on the Motion for Summary Judgment, or in the alternative, modify the ruling. Specifically, Plaintiff asks that the Court include all factual allegations and the cumulative effective of those allegations under the standard of National Railroad Passenger Corp. v. Morgan , 536 U.S. 101 (202).

Dated: February 22, 2005.
Respectfully submitted,

s/Sandra Jackson Sheppard
Attorney & Counselor at law

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

EULICE M. HOLLIMAN,	:	
Plaintiff	:	
vs.	:	CIVIL ACTION
CLARK ATLANTA	:	
UNIVERSITY, INC.	:	NO. 1:03-CV-0132-JEC
INC., and NATHANIEL	:	JURY TRIAL
ROBERTS, JR, in His	:	DEMANDED
Official Capacity as	:	
Assistant Vice President and	:	
Comptroller for Finance and	:	
Administration for Clark	:	
Atlanta University, Inc.,	:	
Defendants.		

PLAINTIFF'S SECOND AMENDED
ORIGINAL COMPLAINT

PRELIMINARY STATEMENT

1. This is an action for declaratory, injunctive, compensatory and punitive damages, costs, and attorney's fees, and other appropriate relief, to redress the deprivation of Plaintiff's rights secured by Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq. ("Title VII") and rights secured by statutory and common law of the State of Georgia, for hostile and abusive work environment discrimination based on gender, and related tortious conduct of Negligent Hiring, Retention and Supervision, which occurred at the Clark Atlanta University, Inc. ("Clark Atlanta University" or "the Defendant University") in Atlanta, Georgia.

JURISDICTION

2. Jurisdiction is vested in this Court pursuant to 28 U.S.C. § § 1331 and 1367(a).

PARTIES

3. Plaintiff, EULICE M. HOLLIMAN ("Holliman" or "Plaintiff"), is a female citizen of the United States of America and the State of Georgia. At all times material herein, Plaintiff has resided in the judicial district of this Court. Plaintiff is an employee of the Defendant Clark Atlanta University, Inc., since or about July 19, 1991, and is presently on disability leave.

4. Defendant CLARK ATLANTA UNIVERSITY is a State of Georgia corporation with its principal place of business at Atlanta, Georgia. Defendant University is in the business of operating as a university, offering undergraduate and graduate degrees and employing more than 500 employees in each of 20 or more calendar weeks in the current or preceding calendar year. Defendant University is an "employer" within the meaning of 42 U.S.C. § 2000e(b). Defendant University may be served through its counsel of record, Gary E. Thomas, Fisher & Phillips LLP, 1500 Resurgens Plaza, 945 East Paces Ferry Road, Atlanta, Georgia 30326.

5. Defendant NATHANIEL ROBERTS, JR. ("Roberts" or "Defendant Roberts") is a male citizen of the United and the State of Georgia and is subject to the personal jurisdiction of this Court. At all times material herein, Defendant Roberts was the Assistant Vice President and Comptroller for Finance and Administration for Clark Atlanta University, and was an agent to whom employment decisions and control had been delegated with supervisory or managerial control over employees, including Plaintiff Holliman. Defendant Roberts is being sued in his supervisory capacity only. Defendant Roberts may be served through his counsel of record, Gary E. Thomas,

Fisher & Phillips LLP, 1500 Resurgens Plaza, 945 East Paces Ferry Road, Atlanta, Georgia 30326.

ADMINISTRATIVE PROCEDURE

6. Within 180 days of the occurrence of the acts set forth herein, Plaintiff filed charges of employment discrimination against the Defendants, a copy of which is attached hereto as Exhibit A, and incorporated as though fully set forth herein, and Plaintiff's amended charge, a copy of which is attached hereto as Exhibit B, and incorporated as though fully set forth herein,.

7. On March 15, 2002, the U.S. Equal Employment Opportunity Commission ("EEOC") issued its determination on the merits of Plaintiff's charge, a copy of which is attached hereto as Exhibit C, and incorporated as though fully set forth herein,.

8. On October 16, 2002, EEOC issued its "Notice of Right to Sue (Conciliation Failure)," a copy of which is attached hereto as Exhibit D, and incorporated as though fully set forth herein, entitling her to institute a civil action in the appropriate Federal District Court within 90 days of the date of receipt of the notice.

STATEMENT OF FACTS

9. Plaintiff began her employment with Defendant Clark Atlanta University, Inc. in or about July 1991 as an Accounts Payables Specialist. At all times relevant to this Complaint, Plaintiff was assigned to the Accounts Payables Department.

10. Throughout her employment, Plaintiff received favorable performance reviews and was performing in an acceptable manner and to the reasonable expectations of her employer until or about December 2000, when Defendant Roberts began his pattern of abuse against her.

11. Defendant Nathaniel Roberts, Jr. was hired as the Assistant Vice President and Finance/Comptroller in or about July of 1998.

12. Prior to July of 1998, Mr. Roberts had been at the University as an external auditor with Clausell & Associates before Plaintiff came to the university in 1991.

13. Defendant Clark Atlanta University was aware of Defendant Roberts' grossly demeaning attitude toward women prior to hiring him in or about July 1998, and subsequent to his hiring, Clark Atlanta University was aware Robert's demeaning attitude continued and worsened.

14. The following illustrates, by way of example and not limitation, the nature of the demeaning conduct Defendant Roberts' displayed toward Plaintiff and other female employees at Clark Atlanta University, in front of other employees.

15. From January 1990 to July 1996, Ms. Joyce W. Stafford was employed with Clark Atlanta University as Administrative Assistant to the Vice President for Administration and Finance and she had numerous occasions to interact with Defendant Roberts and to observe his interactions with other Clark Atlanta University employees. Ms. Stafford observed Defendant Roberts treating female employees in highly demeaning ways, including, but not limited to, rude behavior, belittlement, and other forms of intimidation.

16. After 1996, Ms. Stafford left Clark Atlanta University and was employed by the Morehouse School of Medicine ("Morehouse"), where she again encountered Defendant Roberts and had opportunities to observe his interactions with female employees at Morehouse. At that time, Defendant Roberts was working for Clausell and Associates and was assigned to do a special project at Morehouse. About two weeks into the project, the Grant Accountants, Terryl Obsanya and Petroline Aaron, both females, called a meeting with Mr. Eli H. Phillips, the Vice President of Finance. At the meeting, they demanded

Defendant Roberts be taken off the assignment immediately or they would not return to work. Their complaints were Defendant Roberts did not know how to talk to them, was condescending and refused to treat them with respect; they said they were made to feel like Defendant Roberts disregarded them as employees and that he felt they did not know their job. Mr. Phillips called Mr. James Clausell, CEO of Clausell and Associates, and requested that Defendant Roberts leave the campus immediately. Defendant Roberts was removed from the assignment. There were also statements made that Defendant Roberts smelled of alcohol during the workday.

17. Another aspect of Defendant Roberts' demeaning conduct toward female employees is the conduct he displayed toward Plaintiff. Defendant Roberts always talked to Plaintiff in a harsh, militaristic, and demeaning tone, using demeaning gestures with his fingers and hands, and one occasion in February 2001, Defendant Roberts, while pointing his finger at Plaintiff and motioning his head in a demeaning way, Defendant told Plaintiff something to the effect of: "do not ever talk to Mr. Bobby Young about anything," indicating that she should only address him, Defendant Roberts, and then Defendant Roberts pointed his finger in Plaintiff's face and said "do I make myself clear."

18. On another occasion, Defendant Roberts addressed Plaintiff about some files regarding AT&T; there were three different files in one AT&T folder. Defendant Roberts came to Plaintiff's desk and just threw the files on her desk in a disdainful and disparaging manner and said something to the effect of: "What is this? I need you to put these in proper place."

19. On another occasion, Defendant Roberts, in his usual harsh, militaristic, and demeaning tone, asked Plaintiff about a vendor and the budget number. Defendant Roberts told Plaintiff to find what budget to apply the

payment. When Plaintiff returned to Defendant Roberts' office with the information, he asked about the activity code. Plaintiff went back to Defendant's desk to write the budget code on the check, when Defendant Roberts, in his usual disdainful and disparaging manner, pulled out a piece of paper and wrote something to the effect of: the acronym "FOAPAL". Then with such acrimony and vehemence, Defendant Roberts started beating on his desk saying something to the effect of: "F equals FUND, O equals ORGIN, A equals ACCOUNT, P equals PROGRAM, and A equals ACTIVITY," and Defendant then shouting, "This is how you write it!" moving his head in a disdainful motion.

20. On another occasion, Plaintiff, in carrying out her assigned job duties, went to Defendant Roberts' office to check on a purchase order. Plaintiff was talking to his Assistant Melba Carmichael about the purchase order. When Defendant Roberts overheard Plaintiff, he came out of his office talking to Plaintiff, again, with his demeaning and intimidating tone, and he said something to the effect of: "do you even know the procedure for paying a purchase?" Then Defendant Roberts started pointing his finger on the purchase order, and proceeded to tell Plaintiff how the payment process works, except that, in this instance, Plaintiff knew he was incorrect about the procedure, but she was not allowed to bring this information to Robert's attention. Defendant Roberts was shouting at Plaintiff in front of Ms. Carmichael. Plaintiff felt so humiliated that she walked out and went to the bathroom crying.

21. Defendant Roberts used other methods to demean and intimidate Plaintiff. On a daily basis, Defendant Roberts would pass Plaintiff's desk throughout the day, looking and staring at Plaintiff with a demeaning and distasteful look. Some times Defendant Roberts would

come to the opening of his office door, which faces Plaintiff's desk, and just stare with hatred at Plaintiff. It was so bad that on one occasion Plaintiff's co-worker Michael Womble, a male employee, was observing Defendant Roberts' acts, conduct and behavior, and in commenting to Plaintiff, he said something to the effect of: "if looks could kill, he would kill you." Womble said further that, "he looks at you as if he hates you, and when you are not at work Mr. Roberts do not walk the floor as much." This is an example of how Defendant Roberts retaliated against Plaintiff after she filed her EEOC charge against him. However, Defendant Roberts treated Womble, a male employee, more favorably than Plaintiff and other female employees.

22. Because of Defendant Roberts' attitude toward Plaintiff, the terms, conditions and job assignments of Plaintiff changed, without her prior knowledge that the changes were going to be made. For example, Plaintiff's immediate supervisor, Richard McLemore, took some of Plaintiff's supervisory job duties and gave them to another employee.

23. Whenever McLemore would be out of the office, if there were a need to talk to Defendant Roberts about releasing any checks or getting the cash requirement to run the weekly check run, Plaintiff would be the person to carry out the duty as part of her job responsibilities as the Accounts Payables Supervisor. However, after Plaintiff filed her grievance and EEOC charge, Defendant Roberts' negative attitude escalated toward Plaintiff, and McLemore, without Plaintiff's prior knowledge, took Plaintiff's duties from her and assigned them to another employee.

24. Another way Plaintiff's job assignments and opportunities were affected is in the area of training. When there would be meetings in reference to new software, McLemore, without Plaintiff's prior knowledge, would take

Plaintiff's subordinate to the meetings instead of Plaintiff, the Accounts Payables Supervisor, causing Plaintiff to be ineffective in her job performance.

25. Another way Defendant Roberts demeaned and intimidated Plaintiff and other female employees was by dating Stephanie Moore, another female employee under his supervision who Roberts treated more favorably than Plaintiff. This happened shortly after Defendant Roberts became a permanent Clark Atlanta University employee.

26. Another example of Defendant Roberts demeaning conduct toward female employees at Clark Atlanta University is an incident Toyah Ellis, a female employee, related to Plaintiff. Ellis said there was an older female employee, Dorothy Alexander, working in accounting. At that time, Defendant Roberts was an external auditor for Defendant University. On one occasion, Defendant Roberts told Ellis something to the effect that "Ms. Dorothy Alexander was stupid and that she would not know a Journal Entry if it hit her in the head and that she was worthless."

27. In July 1998, Defendant Roberts went to Tom Poiter's office to see him. Tanya Franklin, a female employee and Poiter's assistant, told Defendant Roberts that Poiter was out of the office and she did not know of his whereabouts. Defendant Roberts lashed out at Franklin, calling her stupid and incompetent. Franklin started crying and ran out of her office looking for Mr. Poiter to tell him about Defendant Roberts, and Defendant Roberts ran after her, chasing her down the hallway, shouting he was finished with her. 'Toyah Ellis and Yvonne Ellis witnessed this incident and made statements to the University's Human Resources Department about what they heard and observed. Tanya Franklin, an employee, drew up a petition and had other women in the Finance Department that had

encounters with Defendant Roberts to sign it and it was given to the Human Resources Department.

28. Another example of Defendant Roberts demeaning conduct toward Clark Atlanta University female employees is regarding Grace Copeland, who works in Public Safety. Copeland came to Defendant Roberts' office to inquire about getting a check cut for repair of a car in her department. Copeland informed Defendant Roberts that the insurance company made the check out to the University instead of the company that repaired the car. Every time Copeland would attempt to talk about the repair company, Defendant Roberts said to her in his usual demeaning manner something to the effect of: "what is the company name? You should say the name each time you are talking and obvious you do not know your job," while pointing his finger in her face, Defendant Roberts continued, "listen to me on how we are going to pay them."

29. Another example of Defendant Roberts' demeaning conduct is regarding Lenada Winston, a female employee. Winston worked in payroll during November 1998 and she told Plaintiff of an incident were Defendant Roberts came to her department and asked the status of inputting the figures into the system for student refunds. Winston attempted to explain and Defendant Roberts cut her off and leaned against the file cabinets and cross his arms and stared at her like she was stupid and said something to the effect of: "obviously you don't understand what it is that I want, let me explain this to you again," with his head moving in a demeaning motion.

30. Another example of Defendant Roberts' demeaning conduct happened to Nivla Nobles, a female employee in the radio station at the University. Nobles came to the Accounts Payables Department to bring some requisitions for payments. Defendant Roberts was standing in the office and starting looking at the requisitions when he

then took the requisitions and threw them back at Nobles and told her she did not know her job and for her to take the requisitions back to her office and not to bring them back until they are done right. Nobles left Defendant Roberts' office crying, and she reported this incident to her immediate supervisor Wendy Williams who wrote a letter to the Human Resource about Defendant Roberts.

31. Another example of Defendant Roberts' demeaning conduct toward female employees at Defendant University happened to Betty White. White is an employee in the Athletic Department at the University. White called Defendant Roberts to talk to him about $3,000 that the Athletic Department had in petty cash fund, to find out what to do with it, since her immediate supervisor Ms. Chandler had died and White wanted to get the cash out of their office. Defendant Roberts told Chandler that she had called the right person and that she could bring him the petty cash. The next day White came to give the petty cash to Defendant Roberts and he exploded; he said to her something to the effect of, "do you know who I am, I am too busy to talk to you, you need to make an appointment to meet with me, the University pays me to do a job and I am busy doing it. If you want to talk to me, you make an appointment with my assistant." White attempted to explain to him that she just wanted to turn the money in and then Defendant Roberts said, "you can leave the money, but I am busy." White left his office crying, and she reported this incident to the University's Human Resource Department.

32. Another example of Defendant Roberts' demeaning conduct is Paula Barnes, a female employee who was working in accounting. Defendant Roberts would talk to her in a demeaning and humiliating way every day. Barnes told Plaintiff that she hated to come to work. Barnes reported Defendant Roberts' conduct to the Human

Resources Department, and the director at that time told her she should seek counseling from the Employee Assistant Program provided by the University for employees.

33. Another way in which Defendant Roberts affected Plaintiff's employment was preventing Plaintiff from receiving the proper pay increase for her position as the Accounts Payables Supervisor. Plaintiff brought this matter to McLemore's attention and McLemore indicated to Plaintiff that Defendant Roberts was responsible for not changing her pay.

34. After the Christmas holidays, Plaintiff returned to work on or about January 2, 2001, but before Plaintiff could go to work she had to go and see the doctor because Plaintiff felt severe stress to the point she felt she was having a nervous breakdown or panic attack. Upon examining Plaintiff, her physician found her blood pressure was up high.

35. After returning to work, Plaintiff began working lunch hours and staying late to complete the 1099's, while, at the same time, keeping up her daily workload. Despite everything Plaintiff was doing, this was not enough for Defendant Roberts. Defendant Roberts continued to be demeaning, humiliating, rude, and very intimidating. Defendant Roberts' attitude was disgustingly ugly and dehumanizing toward Plaintiff.

36. Another time in February of 2001, Defendant Roberts asked Plaintiff about a vendor and Plaintiff was not aware of the information he wanted. Defendant Roberts replied to Plaintiff in his usual militaristic and demeaning tone, "I suggest you get the information and give it to me."

37. Defendant Roberts did not care in front of whom he attached Plaintiff, whether in front of Plaintiff's subordinates, or other employees, Defendant Roberts was ruthless when it came to Plaintiff, completely undermining Plaintiff as the Accounts Payables Supervisor.

38. Even on occasions when Plaintiff would be proactive in her office and get information prepared early, Defendant Roberts would talk to her in a harsh, humiliating, and demeaning manner by saying things to her like "do only what I ask you to do and take nothing upon you own."

39. As a result of Defendant Roberts' ruthless behavior, Plaintiff would often go to the bathroom and cry; sometimes at her lunch hour Plaintiff would go and find a quiet corner and just cry.

40. When Plaintiff would get home in the evenings, Plaintiff would complain to her husband about Defendant Roberts and Plaintiff would be so upset that Plaintiff would go to bed and cry, she felt so torn down by the abuse of Defendant Roberts. This stressful situation affected Plaintiff's family and caused problems between Plaintiff and her husband. Plaintiff could not focus on her duties as a mother or wife.

41. Plaintiff tried talking to her immediate supervisor, McLemore, about the situation, but he, too, appeared as if he was afraid of losing his job, and McLemore distanced himself from Plaintiff, straining the once good working relationship that the two had enjoyed previously to the arrival of Defendant Roberts.

42. Plaintiff could not take the verbal abuse anymore, so Plaintiff complained about Defendant Roberts' conduct to Bobby Young, the Vice President for Finance and Administration, Defendant Roberts' immediate supervisor.

43. Plaintiff told Young of the mental abuse and how Plaintiff could smell alcohol on Defendant Roberts' body on different days. Young informed Plaintiff that if she felt that strongly that she should go to the Human Resources Department and file a complaint.

44. On or about March 15, 2001, Plaintiff filed a complaint against Defendant Roberts with the University's Human Resources Department. Plaintiff never heard

anything back from Human Resources or Young. However, after filing her complaint, Defendant Roberts' hostility and abuses escalated and worsen.

45. By this time, Plaintiff was upset all the time, causing her to seek medical attention frequently. However, Plaintiff would make her appointments in early morning, as her doctor was one exit from her home, and afterwards she would go to work. Plaintiff used appropriate leave time on each occasion.

46. In April of 2001 when Plaintiff received her job performance evaluation, one negative point was that she had a lot of excused tardiness. Plaintiff became afraid to go to the doctor as much as she needed, she was fearful of losing her job, even though she had the sick leave time available for her use.

47. Now Plaintiff was stressed and depressed all the time. This stress and depression aggravated her medical condition Lupus, which had been diagnosed in October of 1999; however, Lupus never bothered Plaintiff until after Defendant Roberts placed her under severe stress, anxiety, and humiliation on a daily basis. Plaintiff blood pressure was always high whenever she went to the doctor and she suffered fatigue, depression and sleep disturbance. Lupus is a condition that can be aggravated by stress.

48. Plaintiff wanted to use the employee assistance program to talk with someone about her job conditions and the severe stress she was experiencing, but only day hours were available and Plaintiff was too afraid to take time off from her job. Plaintiff was afraid Defendant Roberts would fire her.

49. However, there were times that Plaintiff had to take off sick, her joints would hurt to the point that she could hardly walk, and often when Plaintiff arrived at work in the mornings, she would cry before going into the

building, she knew that she would have to encounter Defendant Roberts.

50. There were a several times when Plaintiff got to work and Plaintiff could hardly walk from the elevator to her desk, she was so stressed about coming to work and seeing Defendant Roberts, because Roberts had a practice of walking and staring at her with facial expressions of hatred.

51. Finally, on June 22, 2001 after not hearing anything about her complaint from the Human Resources Department, Plaintiff went to EEOC and filed a charge, previously referenced as Exhibit A.

52. As a result, Plaintiff became even more stressed after filing the complaint with EEOC, Defendant Roberts retaliated against Plaintiff by not speaking to her at all and he continually walked the floor and stared at Plaintiff in a dehumanizing manner.

53. Any questions or concerns about work in the Accounts Payables Department Defendant Roberts would address these questions or concerns to Plaintiff's subordinate or other coworkers, instead of Plaintiff, the supervisor.

54. During all the times Plaintiff worked under Defendant Roberts, she never observed him treating any of the male employees in the demeaning and humiliating manner as he treated her and other female employees.

55. Because of the devastating affect Defendant Roberts' conduct has taken on Plaintiff, she is presently off from work on medical disability, including mental health treatment.

56. All conditions precedent has been performed or has occurred.

OTHER FACTUAL ALLEGATIONS

57. Defendant CLARK ATLANTA UNIVERSITY is a recipient of Federal research and development funds, and

other federal funds, and is bound by contract and Title VII to abide by federal nondiscrimination laws.

58. Defendants deprived Plaintiff of a work environment free from discriminatory intimidation, ridicule, and insult based on her gender, creating a hostile and/or abusive work environment.

59. Defendant University's failure to take action was intentional and reckless, and allowed Defendant Roberts free rein to harass and abuse female employees at Clark Atlanta University, including the Plaintiff.

60. As a result of Defendant University's failure to take action, Plaintiff suffered, and continues to suffer, severe and extreme emotional distress and psychological damage, including but not limited to, an inability to concentrate on her job, depression, debilitating fear, despair, anger, humiliation, and anxiety.

61. Plaintiff also suffered, and continues to suffer, bodily injury, including, but not limited to, physical injury, disruption of sleep, insomnia, loss of appetite, onset and/or aggravation of preexisting medical conditions Lupus.

62. As a result of Defendants' actions and/or inactions, Plaintiff was deprived of a nondiscriminatory work environment in the terms and conditions, assignments, and other benefits of employment, including but not limited to, a lack of professional growth assignments and equity pay increase for her position as Accounts Payables Supervisor. The lack of a nondiscriminatory work environment has serious adverse impact on Plaintiff's professional and economic future.

63. Defendant Clark Atlanta University has a duty under 42 U.S.C. § 2000e, et seq., to establish, publicize, and enforce anti-harassment policies and complaint procedures for all of its employees, including the Plaintiff.

64. In Defendant University's Administrative Policies & Procedures dated August 1998, effective after the hiring

of Defendant Roberts, the University failed to establish and publicize its anti-harassment policies and complaint procedures, or otherwise train Defendant Roberts in anti-discriminatory policies of the University.

65. Defendant Clark Atlanta University is responsible for implementing all policies of the University, including those policies and regulations of the State and Federal laws relevant to equal opportunity and nondiscrimination laws, ensuring that all employees are treated fairly in a work environment free of harassment or abuse, or otherwise discrimination in the terms, conditions, assignments, benefits, or due process.

66. At all times relevant to this Complaint, Defendant Roberts was acting within the course and scope of his employment. Because of the ubiquitous and repeated nature of Defendant Roberts' harassment, its frequency and its pervasiveness, and numerous complaints to the Human Resources Department, the University's management knew, or should have known, of its existence.

67. The specific incidents of discrimination, harassment and failure to take action alleged herein are merely representative, not exhaustive, and they serve to demonstrate the cumulative affect of Defendant Roberts' demeaning and humiliating acts and conduct toward the Plaintiff, and other female employees.

68. At all times relevant to this case, Defendant Roberts' harassment and abuse were unwelcome by Plaintiff, and other female employees similarly situated.

69. On numerous occasions, the Plaintiff, and others similarly situated, reported incidents of harassment and abuse to the appropriate University's Officials, but no reasonable action was taken to stop the gender abuse. Defendant Roberts was a loose cannon.

70. Defendant University failed to take appropriate steps to address or prevent the harm to Plaintiff, including,

but not limited to, failing to discipline and/ or terminate Defendant Roberts; failing to fully investigate Plaintiff's complaints of harassment; failing to educate Defendant Roberts in the University's nondiscriminatory policies and procedures, so as to prevent future harassment.

71. The acts and omissions of Defendant University not only failed to remedy the gender abuse, but also, fostered and promoted the harassment of Plaintiff.

72. Defendant Robert's discriminatory conduct, its severity, its pervasiveness, and its demeaning and humiliating nature, all unreasonably interfered with Plaintiff's work performance and had an economic effect on her employment.

ADDITIONAL ALLEGATIONS STATE TORT CLAIMS

73. At all times relevant herein, Defendant Roberts were acting in the scope of his employment.

74. Defendant University owed Plaintiff a duty of care to ensure the safety and well being of Plaintiff, and others similarly situated, as afforded in an environment free of harassment and abuse.

75. This overall duty of care encompassed a duty to supervise the conduct of all supervisory personnel, including Defendant Roberts, to enforce rules and regulations necessary for the protection of employees, and to take appropriate measures to protect employees from the misconduct of supervisory personnel such as Defendant Roberts.

76. Defendant Roberts, in the course and scope of his duties as an employee of Clark Atlanta University, had a duty to exercise due care to protect Plaintiff from harassment and abuse, including from his own abuse.

77. Defendant Clark Atlanta University had a duty to protect Plaintiff, and others similarly situated, by exercising due care in investigating Plaintiff's complaints of

harassment, abuse, and other acts of discrimination by Defendant Roberts.

78. Defendant University had a duty to take reasonable precautions to protect Plaintiff, and others similarly situated, from harassment, abuse and discrimination based on gender that reasonably could be anticipated and to take prompt and appropriate remedial action to prevent such harassment from occurring or continuing, and if necessary, to remove harassing and abusive supervisory personnel from the University.

79. On or about April 24, 2002, Plaintiff ceased her employment with Defendant Clark Atlanta University by going on medical disability, as Plaintiff could no longer function in the workplace under discriminatory treatment received from Defendant Roberts and reinforced by the University's failure to stop it.

COUNT 1: DISCRIMINATION AND RETALIATION IN VIOLATION OF TITLE VII

80. The previous Paragraphs of this Complaint are incorporated herein by reference.

81. Defendant Clark Atlanta University, Inc. has, through the actions of its supervisory agents, intentionally, maliciously, recklessly, willfully and/or wantonly discriminated against Plaintiff on the basis of her gender and interfered with the benefits, terms, privileges, and conditions of her employment, in violation of Title VII of the Civil Rights Act of 1964, as amended, by (among other ways):

a. In full view of Plaintiff's coworkers and subordinates, Defendant Roberts would shout at Plaintiff in harsh, militaristic, demeaning tones, with demeaning gestures of his fingers and hands, and display utter contempt toward the Plaintiff;

b. Defendant Roberts on a daily basis would walk past

the Plaintiff's desk throughout the day looking and staring at Plaintiff with a demeaning, distasteful and look of hatred;

c. Some of Plaintiff's job duties were removed from her and given to other employees without Plaintiff's prior knowledge, effectively demoting Plaintiff from her promotion as the accounts payable supervisor;

d. Plaintiff was not allowed to receive proper training in reference to new software while her subordinate was given such training;

e. Defendant Roberts demeaned and intimidated Plaintiff by showing favoritism toward subordinate female employee who was engaging in a personal relationship with Roberts;

f. Defendant Roberts treated similarly situated male employees more favorable than Plaintiff and other female employees;

g. Defendant Roberts prevented the Plaintiff from receiving proper pay increase for her position as Accounts Payables Supervisor;

h. Defendant Roberts' conduct often Clark Atlanta Universitysed the Plaintiff to be extremely upset resulting in fear of being fired, uncontrollable crying spells, depression, headaches, and loss of sleep, interference in her family relationships, and aggravation of her preexisting medical condition Lupus.

82. Defendant Roberts was a supervisor with immediate, or successively higher, authority over Plaintiff.

83. Defendant Roberts was aided in accomplishing the gender harassment of the Plaintiff by his agency relationship with the Defendant Clark Atlanta University, Inc.

84. The harassment of Plaintiff by Defendant Roberts as alleged above was unwelcome, and Plaintiff at all times advised Defendant Roberts who committed such

harassment and Plaintiff complained to her immediate supervisor and other upper-level management and no corrective action was taken to stop Roberts' unwelcome conduct.

85. The verbal harassment of the Plaintiff by Defendant Roberts as alleged above was based on Plaintiff's gender.

86. The verbal harassment of Plaintiff by Defendant Roberts, as alleged above, was sufficiently severe or pervasive to create an abusive and hostile work environment for the Plaintiff and other female employees.

87. The conduct of Defendant Roberts, as alleged above, was engaged in while Defendant Roberts' was acting as an agent of the Defendant Clark Atlanta University in the scope of and during the course of his employment.

88. Defendant Clark Atlanta University had notice of the harassment of the Plaintiff and failed to take prompt corrective action.

89. After receiving the Plaintiff's EEOC Charge against Defendants Roberts and the University, the University failed to take immediate steps to investigate the matter under the University's Complaint Resolution Procedure or other applicable policy.

90. Defendant Clark Atlanta University knew, or should have known, before hiring Roberts that Roberts regularly engaged in gender harassment, and that such harassment would continue, and after Roberts' employment, Roberts continued his pattern or practice of gender harassment toward the female employees of the University.

91. As a result of the intentional, willful, malicious, wanton, and/or reckless conduct of Defendants Roberts and Clark Atlanta University, Inc., as previously described in

this Complaint, Plaintiff's right to be free from a hostile and/or abusive work environment was infringed by Defendants on the basis of Plaintiff's gender and Plaintiff suffered damages and her suffering is continuing to present time.

COUNT 2: INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

92. The previous Paragraphs of this Complaint are incorporated herein by reference.

93. Defendant Roberts' behavior toward the Plaintiff was willful and wanton or intentionally directed to harming Plaintiff;

94. Defendant Roberts' actions toward the Plaintiff were such as would naturally humiliate, embarrass, frighten, or outrage an employee; and,

95. Defendant Roberts' extreme and outrageous conduct caused the Plaintiff mental suffering and/or wounded feelings and/or emotional upset or distress.

COUNT 3: NEGLIGENT HIRING, RETENTION, AND SUPERVISION OF DEFENDANT ROBERTS

96. The previous Paragraphs of this Complaint are incorporated herein by reference.

97. Defendant Clark Atlanta University knew or should have known that Defendant Roberts was not suited for the particular employment.

98. Defendant Clark Atlanta University in the exercise of reasonable care should have known of Defendant Roberts' reputation for gender harassment and it was foreseeable that Defendant Roberts would engage in gender harassment of subordinate female employees, but Defendant Roberts was hired, retained after numerous complaints, and unsupervised in his employment.

99. Defendant Clark Atlanta University may have known, or in the exercise of due care, should have had reason to know, of Defendant Roberts' reputation for gender harassment in the absence of complaints but Defendant Roberts was hired, retained and unsupervised in his employment.

100. Defendant Roberts committed negligent and/or intentional torts within scope of his employment in the furtherance of Clark Atlanta University, Inc.'s objectives.

101. Defendant Clark Atlanta University's negligence in failure to take reasonable and prompt corrective action after Plaintiff complained about Defendant Roberts subjected Plaintiff to additional harassment based on her gender.

102. Defendant Clark Atlanta University's negligence in hiring, supervising and/or retaining Defendant Roberts caused Plaintiff to be subjected to harassment based on her gender.

103. Defendant Clark Atlanta University, Inc. knew, or should have known, that Defendant Roberts were aided in the agency relationship prior to hiring and/or subsequent to hiring and that the agency relationship aided Roberts in the commission of harassment of female employees, including the Plaintiff, based on gender.

PRAYER FOR RELIEF

WHERI FORE, premises considered, Plaintiff respectfully prays for a judgment in her favor against Defendants and requests the follow relief:

a. A declaration that Defendants' actions, policies and practices complained of herein violate the rights of Plaintiff as secured by Title VII and/or Georgia law;

b. An order enjoining Defendants from violating the above-referenced federal statutes in the future;

c. Compensatory, punitive, liquidated, and other appropriate dama es (including back pay and front pay);

d. Pre- and post- judgment interest;

e. Costs and reasonable attorneys' fees in this action; and

f. Such other and further relief as the Court deems appropriate and in the interests of justice.

TRIAL BY JURY IS DEMANDED ON ALL COUNTS SO TRIABLE.

Dated: June 9, 2003.

Respectfully submitted,

s/Sandra Jackson Sheppard
Attorney & Counselor at Law

EXCERPTS FROM EXHIBIT A TO PLAINTIFF'S SECOND AMENDED ORIGINAL COMPLAINT

EEOC CHARGE OF DISCRIMINATION
CHARGE NUMBER 110A13704

CHARGING PARTY: EULICE M. HOLLIMAN
DATE: JUNE 22, 2001

CAUSE OF DISCRIMINATION BASED ON: SEX
DATE DISCRIMINATION TOOK PLACE: EARLIEST 12/22/2000 LATEST 06/22/2001
CONTINUING ACTION: ☒
THE PARTICULARS ARE:

"I have been employed by Respondent since July 19, 1991, most recently as an Accounts Payable Supervisor. I and other females in the department have been subjected to demeaning behavior during the past three years by the Vice President/Comptroller of Finance. I and other females have complained to Human Resources about his treatment of females, but no action has been taken. I complained to Human Resources on March 15, 2001.

Respondent has given no reasons for this treatment.

I believe that Respondent has discriminated against me based on my sex, Female, in violation of Title VII of the Civil Rights Act of 1964, as amended.

s/Eulice M. Holliman

EXHIBIT B TO PLAINTIFF'S SECOND AMENDED ORIGINAL COMPLAINT

May 2, 2002

Dear Ms. Daniels:

I am writing this to express my concern about my current employment situation. I have been in the Accounts Payable department at Clark Atlanta University for 11 years. The majority of this time has been very pleasant, however the University's decision to employ Mr. Nathaniel Roberts has proven to be disastrous.

I have been in the accounting field for over 20 years. I have proven myself to be a very good employee and felt that I would be with the University until retirement. However, because of Mr. Roberts demeaning attitude, rude tone and overall treatment to female employees, retiring with the University has become almost impossible.

I filed a complaint with our Human Resources department over a year ago and I have not received a response. Since *the* University clearly refuses to acknowledge or take any action, I filed a complaint with EEOC. Since I filed this complaint with EEOC, things have gotten worst. Mr. Roberts no longer speaks to me at all. He continuously walk the floor and staring periodically at me. Any questions or concerns about work in the department he addresses to my peers, even if it is something I am responsible for. This makes the rest of the staff and myself very uncomfortable. My supervisor, Mr. McLemore reassigned some of my duties to another co-worker so that it would help relieved some of the verbal abused I was receiving from Mr. Roberts. This situation caused me to get a poor evaluation on my job performance. Mr. Roberts can be very intimidating. Prior to Mr. Roberts joining the financial area, I had a very good relationship with my direct supervisor. Since, I filed my complaint, my direct

supervisor *has* become fearful of his own job due to our relationship and now or relationship has become very stranded.

The work environment is unbearable. I feel as if I am being set up to fail. I have been acting *as* the Account Payable Supervisor but never compensated for it. I have been forced to learn how to use our new software, with the help of another coworker, who was properly trained.

During a busy time of the year all the staff were asked to work extra hours and told they would be compensated through comp time. However, when *I* mentioned to my direct supervisor, Mr. McLemore that I was keeping track of my time, Mr. Roberts wrote a memo to Mr. McLemore to inform me that I was excused from working extra hours because he didn't want me to accumulate any comp time. Even after filing my complaint with EEOC, Mr. Roberts retaliation continued through my direct supervisor Mr. McLemore, to attack and question my work ethics.

Since January 2001, I have had to take off sick days because of the stress from dealing with Mr. Roberts. My health has been greatly impacted by this work environment. I am currently on high blood pressure medication, which I was not required to take until last year. I have been on anti depressants. In September of last year, my doctor recommended I take 2 weeks off because the stressful situation at work was impacting my Lupus. I was so afraid of loosing my job, I only took one week and returned to work.

Because Clark Atlanta is a small private institution, I find it difficult to believe that I would be able to find another department that would have a comparable position. The political ties at this University are strong. I feel as if I would be labeled and pushed to the side until they could find a reason to terminate me.

Now recently, as April 24, 2002 I am on disability

from my job. Being stress this last year has really impacted my health. I don't know when or if I will be able to return to work.

Therefore, I am requesting the University compensate me for my hardship. The attached chart illustrates what I would have earned over the next 6 years (half way to retirement) with a 3% raise each year. Also attached is the doctor statement which indicates my high blood pressure and that I was given anti depressants.

The continued uncertainty in this case also causes me great concern. It would be greatly appreciated if you would work diligently for a timely resolution. Should you have any questions, I can be reached at 770-482-1743. Your cooperation is greatly appreciated.

Sincerely,

s/Eulice Holliman

EXCERPTS FROM EXHIBIT A TO PLAINTIFF'S SECOND AMENDED ORIGINAL COMPLAINT
EEOC'S DETERMINATION

I issue the following determination on the merits of this charge.

Respondent is an employer within the meaning of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e, et. seq., and timeliness and all other requirements for coverage have been met.

Charging Party alleges that she has been subjected to demeaning behavior by the Vice President/Comptroller of Finance. Charging Party further alleges that she has complained to Human Resources about his treatment and nothing has been done because of her sex (female) in violation of Title VII.

Respondent denies the allegations and contends that her claims are pretextual, designed solely to curtail the leave time investigation.

Examination of the evidence indicates that on or about March 31, 2001, the Charging Party filed an internal grievance submitted to Respondent's Human Resources Department describing the difficulties she and other staff had with the Vice President/Comptroller of Finance. Shortly thereafter Respondent stated it found problems with Charging Party's leave.

Interviews with witnesses indicate that Charging Party was treated less favorably by the Vice President/ Comptroller of Finance than the males. Witnesses also indicate that Charging Party has constantly been yelled at and "talked down" in a demeaning manner. Male employees are not treated in this manner.

EEOC Charge No. 1 IGA13704 Page 2

Based on the analysis, I have determined that the evidence obtained during the investigation established that

it is more likely than not that Charging Party has been subjected to demeaning behavior because of her sex.

Upon finding that there is reason to believe that Charging Party was discriminated against, the Commission attempts to eliminate the alleged unlawful practice by informal methods of conciliation. Therefore, the Commission now invites the parties to join with it in reaching a just resolution of this matter. The confidentiality provisions of Title VII and Commission Regulations apply to information obtained during this conciliation.

If the Respondent declines to discuss settlement or when, for any other reason, a settlement acceptable to the District Director is not obtained, the Director will inform the parties and advise them of the court enforcement alternatives available to aggrieved persons and the Commission. A Commission representative will contact each party in the near future to begin conciliation.

You are reminded that Federal law prohibits retaliation against persons who have exercised their rights to inquire or complain about matters they believe may violate the law. Discrimination against persons who have cooperated in Commission investigations is also prohibited. These protections apply regardless of the Commission's determination on the merits of the charge.

On Behalf of the Commission:
Date: March 15, 2002

s/Bernice Williams-Kimbrough
Director
Atlanta District Office

No. 05-1326

IN THE

Supreme Court of the United States

EULICE M. HOLLIMAN,

Petitioner,

v.

CLARK ATLANTA UNIVERSITY, INC. and NATHANIEL ROBERTS, JR.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF IN OPPOSITION

GARY E. THOMAS
Counsel of Record
POWELL GOLDSTEIN LLP
One Atlantic Center
1201 West Peachtree Street, N.W.
Fourteenth Floor
Atlanta, Georgia 30309
(404) 572-6600

Counsel for Respondents

201792

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

QUESTION PRESENTED

Whether Petitioner has presented compelling reasons to grant the Petition, where the Eleventh Circuit's Opinion affirming the District Court's rigorous analysis of Petitioner's evidence does not conflict with a decision of this Court or a Court of Appeals, and where Petitioner does not claim that the Eleventh Circuit's ruling implicates an important federal question that has not been settled by this Court.

CORPORATE DISCLOSURE STATEMENT

Clark Atlanta University, Inc. is a privately-owned institution. No individual or corporation owns 10% or more of Clark Atlanta University, Inc.'s stock.

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INTRODUCTION

Petitioner has presented no "compelling reasons" for her Petition for a Writ of Certiorari to be granted ("Petition"). *See* Sup. Ct. R. 10. Specifically, Petitioner fails to demonstrate that the Eleventh Circuit's January 17, 2006 Opinion ("Opinion") – which affirmed the District Court's rigorous analysis of Petitioner's evidence – is in conflict with a decision of this Court or another Court of Appeals, or that the Eleventh Circuit decided an important federal question that has not been settled by this Court. *See* Sup. Ct. R. 10(a)-(c). In actuality, all that Petitioner has done is challenge the lower court's findings of fact and the application of a properly stated rule of law. Such challenges, however, do not warrant review by this Court. *See* Sup. Ct. R. 10 ("A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law."). Therefore, the Petition should be denied.

RESPONSE TO PETITIONER'S STATEMENT OF THE CASE

Petitioner Eulice M. Petitioner ("Petitioner"), a former employee of Respondent Clark Atlanta University, Inc. ("CAU"), alleges that CAU subjected her to a gender-based hostile work environment, in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e ("Title VII"), based on the allegedly demeaning, militaristic and harsh manner in which a male supervisor, Respondent Nathaniel Roberts, Jr. ("Roberts"), spoke to her. Petitioner filed the instant lawsuit on January 16, 2003. (R-1). Petitioner filed her Second Amended Complaint on June 9, 2003. (R-13; Pet. App. at A143-A171). CAU and Roberts separately filed their

Motions for Summary Judgment on July 12, 2004. (R-44, R-45). On February 3, 2005, the Magistrate Judge issued a Final Report and Recommendation ("R&R") recommending granting CAU's and Roberts' motions for summary judgment. (R-97; Pet. App. at A4-A57). The R&R was based on multiple grounds. Of primary importance to this Petition are the findings that Petitioner failed to establish a *prima facie* case of hostile work environment harassment because (1) none of Roberts' alleged comments or conduct were gender-specific or bore any relation to Petitioner's protected status as a woman,[1] and (2) the nine allegedly harassing incidents that took place between December 13, 2000 through June 19, 2001 were too isolated to rise to the level of severe or pervasive conduct.[2] By Order dated March 2, 2005, the District Court adopted the R&R and dismissed Petitioner's Title VII hostile work environment harassment claim. (R-100 adopting R-97; Pet. App. at A3). Petitioner filed a notice of appeal to the United States Court of Appeals for the Eleventh Circuit on April 1, 2005. (R-104). Oral argument was held on January 12, 2006, and the Eleventh Circuit issued an Opinion affirming the grant of summary judgment on January 17, 2006. (Pet. App. at A1-A2).

REASONS FOR DENYING THE PETITION

The decisions below do not conflict with a decision of this Court or any Court of Appeals nor do they implicate a federal question that has not been decided by this Court. Accordingly, Petitioner has not carried her burden of proof demonstrating any "compelling reasons" for the Petition to be granted. *See* Sup. Ct. R. 10.

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1. *See* Pet. App. at A31-A32.

2. *See* Pet. App. at A34-A35.

At its core, Petitioners basic argument is that she can establish a Title VII violation by asserting that Roberts' so-called "normal abrasive and militaristic management style"[3] affected female workers more severely than their male counterparts. As a matter of law and sound policy, Petitioner cannot prevail on that contention.

In *Meritor Savings Bank, FSB v. Vinson*, 477 U.S. 57, 64 (1986), this Court confirmed that Title VII "evinces a congressional intent to strike at the entire spectrum of disparate treatment of men and women in the workplace." The current Petition, however, seeks to expand Title VII's coverage beyond "disparate treatment" to encompass ***disparate effects*** of similar treatment of men and women in the workplace.[4] Such an unwarranted expansion is not authorized under this Court's controlling authorities. *See, e.g., Oncale v. Sundowner Offshore Services, Inc.*, 523 U.S. 75, 81 (1998) ("Title VII does not prohibit all verbal or physical harassment in the workplace; it is directed only at '*discriminat[ion]* . . . because of sex.' . . . 'The critical issue, Title VII's text indicates, is whether members of one sex are exposed to disadvantageous terms or conditions of employment to which members of the other sex are not exposed.' ") (quoting *Harris v. Forklift Systems, Inc.*, 510 U.S. 17, 25 (1993)). The Eleventh Circuit has not, as Petitioner alleges, been inconsistent in its application of

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3. Pet. p. 29.

4. The true intent of Petitioner's argument was revealed in her brief to the Eleventh Circuit, wherein she contended: "Under *Morgan*, a jury would be able to determine whether the cumulative effect of Roberts' conduct affected the female employees in such a manner as to create a hostile and abusive work environment, as compared to the similarly situated male employees." (Appellant's Initial Brief, p. 29).

this Court's precedent, but has instead held true to well-settled authority requiring a showing that the alleged harassment was "because of sex." No such showing was made by Petitioner in this case; therefore, the Eleventh Circuit properly affirmed the District Court's grant of summary judgment.

I. The District Court Properly Found that Petitioner Did Not Show that the Alleged Harassment was "Based on Her Sex".

To succeed on a hostile work environment harassment claim, Petitioner must establish that the alleged harassment was motivated by her gender. *See Gupta v. Florida Bd. of Regents*, 212 F.3d 571, 583 (11th Cir. 2000) ("[T]he statements and conduct must be of a sexual or gender-related nature . . . before they are considered in determining whether the severe or pervasive requirement is met."). To establish that the harm alleged was "based on her sex, [Petitioner] must show that but for the fact of her sex, she would not have been the object of harassment." *Henson v. City of Dundee*, 682 F.2d 897, 904 (11th Cir. 1982) . Here, the district court held that Petitioner failed to make out a *prima facie* case of hostile work environment harassment because she could not demonstrate that Roberts' alleged comments or conduct were gender-specific or bore any relation to her protected status as a female. (Pet. App. at A31-A32). The record supports this finding.[5]

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5. Petitioner also admits that Roberts treated male employees harshly. (Pet. p. 28). ("The record shows [that] male employees acknowledged the abrasiveness of Mr. Roberts[.]").

A. The Record Evidence Shows that Roberts' Alleged Conduct Was Not Gender-Specific.

The witness testimony in this case yielded numerous examples of Roberts' abrasive conduct towards male employees. For example, Teja Singh, former Director of Grants and Contracts, testified that there were occasions in which he "felt Mr. Roberts was demeaning [him]." (R-72 p. 24-25). Singh also testified that Roberts would "shout" at him and ask questions in a "more aggressive way." (*Id.* at 41). Other CAU employees witnessed Roberts' demeaning and harsh treatment of Singh. Pam Pressley testified that, "Nate [Roberts] could be very disrespectful to Teja [Singh]." (R-70, pp. 35-36). Marinetta Blalock also testified that she observed Roberts being "belligerent" towards Singh. (R-55 p. 23).

Singh was not the only male whom Roberts treated in a rude or demeaning manner. Vice President of Finance Robert Young stated that Roberts could be "sarcastic" and "demeaning" and he related a specific incident in which Roberts "got loud and short and flippant, totally unprofessional, towards him (Young)." (R-75 pp. 95-96). Young also testified that David Alexander, Director of Facilities, had complained to him about "Mr. Roberts and the way he communicated with him[,] [and stated] that Mr. Roberts was harsh [and] sarcastic in his tone and in his demeanor." (R-75 p. 45). Another male employee, Daryl Givens, testified that Roberts has "gotten loud" with him and "repeated a question to [Givens] more than once" in his usual abrasive manner. (R-62 pp. 58-61). Givens stated that he also observed Roberts speaking to Singh "in a harsh manner" and that another male employee, Kif, would be in a "heated" mood – i.e., visibly upset – after meeting with Roberts in the hallway. (*Id.* at 21-26). Givens also noted that

Patrick Thomas had "personality conflicts with [Roberts]." (*Id.* at 33).

Far from having any relation to gender, the record evidence establishes that Roberts could "exhibit[] a hard militaristic style" of management which, at times, "didn't give the mutual respect required." (R-75, p. 94). As a result, Roberts was not well liked by anyone at the University, male or female. (R-60 p. 77). Paula Barnes, an accountant, attributed Roberts' discourteous treatment to the fact that Roberts "was just a mean, nasty person."[6] (R-54 pp. 16-17). These and other examples precluded the possibility of any finding of gender bias based on Roberts' management style and work-related interactions.[7] *See, e.g., Henson*, 682 F.2d at 904 ("[W]here the conduct complained of is equally offensive to male and female workers[,] . . . the sexual harassment would not be based upon sex because men and women are accorded like treatment[,] . . . [and] the plaintiff would have no remedy under Title VII.").

The uncontroverted testimony of numerous CAU employees conclusively demonstrated that Roberts was just

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6. Barnes also testified that it never crossed her mind that Roberts' behavior had anything to do with gender, i.e., "a male/female thing." (R-54 p. 17).

7. *See also* Deposition of Toyah Ellis, (R-60 p. 65) (Ellis observed Roberts' interactions with the employees in the predominantly male Grants and Contracts department, and she stated that Roberts was "abrasive" in dealing with those individuals. Ellis candidly noted that Roberts is "an abrupt and abrasive person; that's who he is."); Deposition of Latonia Franklin, (R-61 p. 12) ("There was another department that we worked in that had basically mostly males in the department, and I just heard [Roberts] had a couple of run-ins with people in the department, [and] the head of the department [i.e., Singh].").

as demeaning to males as he was to females. Hence, the district court correctly found that Petitioner had no basis for contending that the alleged verbally abusive treatment she received from Roberts had anything to do with her gender.[8] (Pet. App. at A33) ("Plaintiff's asserted harassment was not based on her gender because men and women were accorded like treatment, and the evidence shows that Defendant Roberts was not well-liked by men or women.") (cits. omitted). The Eleventh Circuit properly affirmed the grant of summary judgment on this basis.

B. The Proffered Evidence From Third Party Witnesses Concerning Roberts' Alleged Conduct in the Pre-Limitations Period Does Not Diminish the Correctness of the Lower Court's Finding that Roberts' Conduct Was Not Gender-Specific.

Petitioner attempts to create the illusion of an actionable hostile environment claim based on this Court's decision in *National Railroad Passenger Corp. v. Morgan*, 536 U.S. 101 (2002). Petitioner contends that *Morgan* authorizes the inclusion, as part of her hostile environment claim, of any and all of Roberts' interactions with female employees during the pre-limitations period,[9] even those that pre-dated his

8. The District Court also held that the evidence showed that Roberts criticized Petitioner because he did not believe that she was doing her job effectively, or at least to his satisfaction. (R-97 p. 35; Pet. App. at A145). This additional, unchallenged finding provided yet another gender-neutral explanation for Roberts' conduct.

9. Petitioner filed her Charge of Discrimination with the Equal Employment Opportunity Commission on June 22, 2001. (Pet. p. 25.) As Georgia does not have a deferral state agency, the Charge of Discrimination would normally encompass only those alleged acts of discrimination that fell within the preceding 180-day period (i.e., on or after December 24, 2000). *See* 42 U.S.C. § 2000e-5(e)(1).

actual employment with CAU in January 1998. According to Petitioner, this would include the entire pre-employment period of approximately 7-years during which Roberts worked as an independent contractor for an outside accounting firm that performed annual audits of CAU. Plaintiff even goes so far as to bring in allegations concerning Roberts' pre-employment interactions with female workers at another, unrelated university (i.e., Morehouse School of Medicine) for which Roberts had performed auditing services prior to joining CAU.[10] Petitioner has no justification for making these tremendous leaps.

In *Morgan*, the Court upheld the portion of the Ninth Circuit's decision that allowed a plaintiff in a hostile environment case to present evidence from the pre-limitations period that included the plaintiff's own testimony regarding alleged racially discriminatory acts that he had experienced and the testimony of various other employees regarding management's use of racial jokes, racially derogatory acts, racial epithets, and negative comments regarding the capacity of blacks to be supervisors. 536 U.S. at 120. Here, however, Petitioner is without any pre-limitations evidence concerning Roberts' conduct towards her,[11] and she relies almost exclusively

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10. *See* Pet. pp. 4-5.

11. Petitioner testified upon deposition that Roberts' alleged abuse toward her began in December 2000. (R-77 pp. 141-142). Likewise, Petitioner's EEOC Charge states that the earliest discrimination about which she complains took place on December 22, 2000. (R-13, Ex. A; Pet. App. at A166). In addition to her deposition testimony and EEOC Charge, Paragraph 10 of Petitioner's Amended Complaint states that the alleged "pattern of abuse" began in or about December 2000. (R-13 ¶ 10; Pet. App. at A145). Similarly,

(Cont'd)

on third party testimony concerning Roberts' alleged interactions with other female employees covering a period going back nearly 10 years prior to the starting date of her alleged harassment in December 2000. Furthermore, unlike *Morgan*, where the reported third-party conduct was, on its face, probative of actual race discrimination, the pre-limitations evidence that Petitioner presents is simply more of the same gender-neutral, work-related verbal criticisms involving female employees. The fact is that while Roberts could be abrupt, abrasive and even harsh during his pre-employment contacts with CAU female employees, the record shows that he was equally abrasive with male employees during that same time frame. Thus, Petitioner still fails to make the required showing that Roberts' alleged conduct, even during the pre-limitations period, was "because of sex."

II. The District Court Properly Found that Dismissal of Petitioner's Hostile Environment Claim was Required Because the Conduct Alleged Was Not Severe or Pervasive.

The district court also held that Petitioner "cannot establish the fourth prong of her prima facie case, because [Respondent] Roberts' alleged conduct was not sufficiently severe or pervasive to establish the existence of an actionable hostile work environment." (Pet. App. at A35). Petitioner's misplaced reliance on *Morgan* to import into this case the

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(Cont'd)

Petitioner unequivocally stated in her Responses to Mandatory Disclosures that "Plaintiff contends that ***beginning in or about December 2000, Defendant Roberts began to demonstrate a pattern of abuse towards her***." (R-24 p. 2) (emphasis added).

testimonies of various other female co-workers concerning alleged incidents from the pre-limitations period does nothing to diminish the correctness of the lower court's finding that the conduct which was directed at Petitioner (i.e., the nine alleged harassing acts that took place between December 2000 and June 2001), were "not sufficiently severe or pervasive to establish the existence of an actionable hostile work environment." Thus, Petitioner still fails to satisfy the fourth prong of her prima facie case.

Petitioner's handful of alleged incidents between December 2000 and June 2001 fall woefully short of satisfying the severe and pervasive standard for establishing a Title VII sex harassment claim. To state a claim of actionable sexual harassment, Petitioner must show that the harassment was "sufficiently severe or pervasive 'to alter the conditions of [her] employment and create an abusive working environment.' " *Meritor, supra*, 477 U.S. at 67. The Eleventh Circuit has noted that "[a]ll of the sexual harassment cases upheld by the Supreme Court have involved patterns or allegations of extensive, long lasting, unaddressed, and uninhibited sexual threats or conduct that permeated the plaintiffs' work environment." *Gupta*, 212 F.3d 571, 586 (11th Cir. 2000) (quoting *Indest v. Freeman Decorating, Inc.*, 164 F.3d 258, 264 (5th Cir. 1999)).

A. Petitioner Cannot Rely Solely on Her and Her Female Co-Workers Subjective Beliefs.

Establishing that harassing conduct is severe or pervasive requires more than an employee's subjective belief that the harassment meets such standards. It also requires that "a reasonable person would perceive the environment as hostile and abusive." *Gupta*, 212 F.3d at 583; *accord Harris*,

supra, 510 U.S. at 21-22 (explaining that the severe and pervasive element contains both a subjective and objective component). The harassment alleged by Petitioner fails the objective test.

Petitioner asks this Court to ignore the undisputed evidence demonstrating that Roberts' actions were equally applied to both men and women; instead, Petitioner submits that Title VII should be expanded beyond its confines to evaluate the subjective effect Roberts' actions had on not only on her but on all of CAU's female employees. Basically, Petitioner asks the Court to climb into her mind and evaluate how Roberts' equally applied militaristic management style personally affected Petitioner (and other female employees) in contrast to her male colleagues. However, Petitioner's subjective view cannot outweigh the district court's decision holding that a reasonable person could not have found Petitioner's work environment hostile or abusive. *See Gupta*, 212 F.3d at 583.

This Court has stated that "the objective severity of the harassment should be judged from the perspective of a reasonable person in the plaintiff's position considering 'all the circumstances.' " *Oncale*, 523 U.S. 75, 81 (1998) (quoting *Harris*, 510 U.S. at 23). That assessment is made "by looking at all the circumstances, including the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance." *Clark County School District v. Breeden*, 532 U.S. 268, 270-271 (2001) (*per curiam*) (internal citations omitted); *Mendoza v. Borden, Inc.*, 195 F.3d 1238, 1245-1246 (11th Cir. 1999) (*en banc*). Plaintiff's claim falls short under the "severe and pervasive" analysis.

B. Petitioner Cannot Establish That The Alleged Harassment Was Sufficiently Severe or Pervasive.

Stripped of the hyperbole, Petitioner's sexual harassment claim distills to an insignificant number of isolated alleged incidents scattered over a six (6) month period.[12] Even when taken together, these events never approach the level of conduct required to constitute a hostile work environment. This Court has made clear that "isolated incidents" such as these are not enough to establish actionable sexual harassment. *Faragher v. City of Boca Raton*, 524 U.S. 775, 788 (1998). The specific incidents alleged by Petitioner, whether analyzed separately or together, simply do not establish conduct sufficiently severe or pervasive to create a hostile environment in violation of Title VII. *See, e.g., Mendoza*, 195 F.3d at 1249 (Affirming the dismissal of a hostile environment claim where the complained of conduct "occurred over an eleven-month period and therefore were far too infrequent to alter the conditions under which [the

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12. The Magistrate Judge succinctly summarized Petitioner's alleged harassing incidents as follows:

> [Petitioner's] nine incidents of harassment over six months from December 2000, through June 2001 – speaking in a harsh tone, nitpicking, saying if she could not do her job then maybe someone else should, yelling at her for going over his heada to Mr. Young, reprimanding her for doing more than he asked on a task, cutting her off and shouting at her for misfiled invoices, abrasively and demandingly describing how to do tasks, and yelling at her for going over his head to HR to discuss her leave – are not sufficiently severe.

Pet. App. at A37-A38.

plaintiff] was required to perform her job."); *Baskerville v. Culligan Int'l Co.*, 50 F.3d 428, 430 (7th Cir. 1995) ("We do not think that these [nine] incidents, spread over seven months, could reasonably be thought to add up to sexual harassment.").

In stark contrast to Petitioner's version of "harassment," a Title VII plaintiff must prove that "the workplace is *permeated* with 'discriminatory intimidation, ridicule, and insult,' " *Harris*, 510 U.S. at 21, which "has the purpose or effect of unreasonably interfering with [the] individual's work performance or creating an intimidating, hostile or offensive working environment." *Meritor*, 477 U.S. at 65. This Court held in *Meritor* that "[f]or harassment to be actionable, it must be sufficiently severe or pervasive 'to alter the conditions of [the victim's] employment and create an abusive working environment'." *Id.* at 67 (quoting *Henson v. City of Dundee*, 682 F.2d 897, 904 (11th Cir. 1982)). Correspondingly, the Eleventh Circuit has repeatedly held that sporadic, isolated conduct will not maintain a hostile work environment claim. *See, e.g., Watkins v. Bowden*, 105 F.3d 1344, 1355-56 (11th Cir. 1997) (affirming trial court's ruling of no sexually hostile work environment where there were numerous workplace references to the size of men's penises and questioning of the plaintiff about the quality of the sex with her husband).

The District Court correctly concluded that the conduct about which Petitioner complains was not severe, and the Eleventh Circuit did not err in affirming that decision. At most, Petitioner identifies nothing more than an inconsequential number of less than courteous work-related interactions with Roberts, none of which, even by Petitioner's own testimony, indicate hostility towards Petitioner based

on her gender. Petitioner's gender-based hostile environment claim fails because, on her own version, the day-to-day interactions at issue are nothing more than sporadic, isolated occurrences, innocuous comments and events.

More fundamentally, Roberts' interactions with Petitioner were clearly job-related. His critiques identified by Petitioner fall well short, as a matter of law (and common sense), of constituting behavior so objectively severe or pervasive as to alter her working conditions. "Title VII was never intended to protect employees from all unpleasant and rude conduct in the workplace." *Mendoza*, 195 F.3d at 1253 (Edmondson, J., concurring). As this Court has held, Title VII is not a "general civility code." *Faragher*, 524 U.S. at 788. On Petitioner's own version of the facts, her allegations do not begin to sustain a legitimate Title VII sex harassment claim.

Petitioner's abject failure of proof signaled the failure of her claim. Here, just as was noted in previous Eleventh Circuit cases, "a finding that [Petitioner's] complaints constitute sexual harassment would lower the bar of Title VII to punish mere bothersome and uncomfortable conduct and would 'trivialize true instances of sexual harassment.' " *Gupta*, 212 F.3d at 586 (quoting *Mendoza*, 195 F.3d at 1252 n. 10). The sum total of Petitioner's purported sex harassment "evidence" neither merited nor required a trial. Summary judgment for CAU was therefore mandated. Nothing in Petitioner's argument regarding the alleged incidents involving the various other female employees has any bearing whatsoever on the alleged abusive conduct she experienced between December 2000 and June 2001. There is simply no basis for disturbing the lower court's well-supported conclusion that the conduct as alleged did not amount to severe or pervasive harassment. The Petition should be denied.

III. The Decisions From the Eighth and Ninth Circuits are Distinguishable Because They Both Involve Actual Threats of Physical Harm and Evidence of Physical Abuse Against Female Employees.

Petitioner's citations to the Eighth Circuit's decision in *Kopp v. Samaritan Health System, Inc.*, 13 F.3d 264 (8th Cir. 1993), and the Ninth Circuit's decision in *EEOC v. National Education Association, Alaska*, 422 F.3d 840 (9th Cir. 2005), do not alter the outcome of this case. While both *Kopp* and *National Education Ass'n* involved allegations by female plaintiffs concerning the allegedly abusive conduct of male supervisors, the similarities to the present case end there. Unlike here, the conduct of the male harassers in *Kopp* and *National Education Ass'n* was shown to be demonstrably more egregious towards women than men because, in both instances, the alleged conduct also involved "actual physical contact and harm [to the female employees]; [whereas] all of the incidents involving male employees consists only of a raised voice or verbal assault." *Kopp*, 13 F.3d at 269. *See also National Education Ass'n*, 422 F.3d at 843 (noting that the male harasser's "verbal conduct also had a physical accompaniment").

In *National Education Ass'n*, the Ninth Circuit listed several examples of the male harasser's "threatening physical gestures" towards female workers, including lunging across a table and shaking his fist at a female worker; coming up behind a female employee, grabbing her shoulders and yelling "get back to your office"; pumping his fist in a female employee's direction and stepping towards her; and regularly invading female employees' personal space. 422 F.3d at 843-844. Similarly, in *Kopp*, the Eighth Circuit found differential treatment between the sexes based on the fact that the record contained "numerous instances of [the male harasser]

swearing at, throwing objects at, using vulgar names to refer to, and shoving female hospital employees." 13 F.3d at 267. The physical components of these cases clearly distinguish them from Roberts' alleged conduct herein, which was limited to only his "*normal* abrasive and militaristic management style." (Pet. p. 29) (Emphasis supplied).

The record is devoid of any accusations of "threatening physical gestures" or actual physical abuse committed by Roberts. As the Magistrate Judge correctly noted:

> The bare bones of [Petitioner's] allegations are simply that [Respondent] Roberts criticized [Petitioner's] work performance, arguably in a non-constructive way, and perhaps a bit belittling. However, the fact that Defendant Roberts raised his voice and exhibited a militaristic, rigid, management style does not indicate that he was physically threatening.

Pet. App. at 37. The record also reflects that Roberts' verbal tirades were directed to males and females alike.[13]

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13. The Magistrate Judge correctly found that:

> The record in this case shows that Defendant Roberts was harsh and disrespectful toward male employees, such as Mr. Singh, Mr. Alexander, and Mr. Givens, and that Defendant Roberts' abrasive and authoritative management style was exemplified by Defendant Roberts raising his voice and repeating his questions. [Cits. omitted]. Thus, Plaintiff's asserted harassment was not based on her gender because *men and women were accorded like treatment*, and the evidence shows that Defendant Roberts was not well-liked by men or women.

Pet. App. at A32-A33 (emphasis added).

As Petitioner candidly acknowledges at the conclusion of her Petition: "The bottom line is that Mr. Roberts was a bully who loved to push his weight around *with all employees.*" (Pet., p. 29) (Emphasis added). This salient admission highlights the correctness of the lower court's decision to grant summary judgment and the Eleventh Circuit's affirmance thereof. It also confirms why the Petition should be denied.

IV. Petitioner Does Not Seek Review of the Lower Court's Dismissal of Her Retaliation Claim or Her State Law Claims.

The judgment below also dismissed Petitioner's Title VII retaliation claim and her accompanying state law claims for intentional infliction of emotional distress and negligence, which Petitioner has not asked this Court to review. Supreme Court Rule 14.1 requires the petition to contain the "questions presented for review," in order to provide the respondent with sufficient notice and to assist the Court in "selecting the cases in which certiorari will be granted." *Yee v. Escondido*, 503 U.S. 519, 535-536 (1992). Petitioner included only challenges to the lower court's dismissal of her Title VII hostile work environment claim in her question presented and excluded all remaining claims. Petitioner cannot claim that her retaliation claim or her state law claims present questions that are "subsidiary" to and "fairly included" within her question relating to her gender-based harassment claim. Thus, those claims are not presented before this Court. *See, e.g., Glover v. United States*, 531 U.S. 198, 205 (2001) ("As a general rule, furthermore, we do not decide issues outside the questions presented by the petition for certiorari.") (citing Sup. Ct. R. 14.1).

It also should be noted that Petitioner failed to address either her retaliation or state law claims in her appeal to the Eleventh Circuit.[14] That court has consistently held that "arguments not raised in an appellant's initial brief are deemed waived." *Fed. Sav. & Loan Ins. Corp. v. Haralson*, 813 F.2d 370, 373, n.3 (11th Cir. 1987). *Accord Lind v. United Parcel Service*, 254 F.3d 1281, 1283 n.2 (11th Cir. 2001) (citing FRAP 28(a)). As a general rule, this Court also has refrained from deciding issues that were "neither raised in nor passed upon by the Court of Appeals." *Glover*, *supra*, 531 U.S. at 205 ("In the ordinary course we do not decide questions neither raised nor resolved below.") (citing *Taylor v. Freeland & Kronz*, 503 U.S. 638, 646 (1992)). *Accord Nelson v. Adams USA, Inc.*, 529 U.S. 460 (2000) ("It is indeed the general rule that issues must be raised in lower courts in order to be preserved as potential grounds of decision in higher courts.")

In this case, the district court granted summary judgment on Petitioner's Title VII retaliation claims based on (1) Petitioner's failure to exhaust her administrative remedies by amending her EEOC charge to include such a claim; and (2) Petitioner's failure to establish a *prima facie* case by showing that she suffered any adverse employment action. (*See* Pet. App. at A38-A48). The district court also granted summary judgment to Roberts and CAU on Petitioner's state law claims for intentional infliction of emotional distress and

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14. The Eleventh Circuit's January 17, 2006 Opinion confirms that only "issues presented on appeal are (1) whether the district court properly granted the defendant's motion to strike the declaration of Richard McLemore; and (2) whether the district court properly granted summary judgment to defendants because Petitioner could not establish a prima facie case of gender-based hostile work environment discrimination." (Pet. App. at A2).

negligence, respectively, because Petitioner failed to satisfy each of the elements necessary to proceed with these claims. (*See* Pet. App. at A48-A57). As previously noted, Petitioner's appellate brief failed to address the district court's dismissal of her retaliation claim and her state law claims; as such, Petitioner abandoned these claims at the circuit court level.

V. The District Court Did Not Abuse Its Discretion in Striking the Affidavit of Richard McLemore.

Petitioner has also failed to show that the district court improperly struck the Declaration of Richard McClemore. Petitioner produced no legal authority on appeal to the Eleventh Circuit supporting her argument that the sham affidavit rule adopted by the Eleventh Circuit in *Van T. Junkins and Assocs., Inc. v. U.S. Indus.*, 736 F.2d 656 (11th Cir. 1984), does not extend to non-party witnesses. Moreover, Petitioner completely failed to address the fact that the district court excluded McClemore's declaration for the separate, independent reason that Petitioner failed to disclose it pursuant to Fed. R. Civ. P. 26 and 37(c). The Eleventh Circuit correctly concluded that the district court did not abuse its discretion in making the evidentiary ruling to strike the declaration. (*See* Pet. App. at A2). Petitioner has made no showing to the contrary here.

CONCLUSION

Petitioner has not established any compelling reasons for this Court to grant the Petition. Therefore, Respondents respectfully request that the Petition be denied.

Respectfully submitted,

GARY E. THOMAS
Counsel of Record
POWELL GOLDSTEIN LLP
One Atlantic Center
1201 West Peachtree Street, N.W.
Fourteenth Floor
Atlanta, Georgia 30309
(404) 572-6600

Counsel for Respondents